886.

# SUPREME COURT OF THE UNITED STATES.

## No. 106.

RICHARD BEIN AND MARY, HIS WIFE, APPELLANTS,

vs.

MARY HEATH.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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Be it remembered, that on the twenty-second day of June, A. D. 1843, the plaintiffs, Richard Bein and Mary Bein, his wife, came into court by H. B. Eggleston, their solicitor, and filed the following bill in chancery:

*Bill in chancery.*

To the honorable the judges of the circuit court of the United States, for the fifth circuit, in and for the eastern district of Louisiana, in chancery sitting, humbly complaining, your orator Richard Bein, and your oratrix Mary Bein, his wife, both of whom are citizens of the State of Louisiana, and residing in the city of New Orleans, respectfully shew unto your honors, that on or about the first day of May, in the year of our Lord one thousand eight hundred and thirty-eight, the said Richard Bein being desirous of obtaining a loan of money, applied to one Sherman Heath, now deceased, and borrowed of the said Sherman Heath the sum of ten thousand seven hundred and eleven dollars and seventy-one cents, or thereabouts, by stipulating to pay to said Heath interest thereon at the rate of ten per cent. per annum; that for the purpose of securing the payment of the said sum of money, and the interest thereon, Mary Bein, your oratrix, then and still being the wife of the said Richard Bein, with the authorization of the said Richard Bein, to wit, on the first day of May, 1838, at the city of New Orleans, in the State of Louisiana, drew her several promissory notes, by which she promised to pay to the said Richard Bein, her husband, the sum specified in each of said notes, which said notes were endorsed in blank by said Richard Bein, and the same were once held, and in the possession of, the said Sherman Heath. That your said oratrix executed one promissory note in favor of her said husband, for the sum of ten thousand seven hundred and eleven dollars and seventy-one cents, payable five years after date, and another note in favor of her said husband, for the sum of five hundred and thirty-five dollars and fifty-nine cents, payable sixty months after date. That for the purpose of more fully securing the repayment of the said loan and interest, your oratrix was induced to mortgage and hypothecate her separate and individual property against her own wishes, and did on the 8th day of May, 1838, in the city of New Orleans, in the State of Louisiana, before David L. McCay, a notary public in said city, execute an act of mortgage to said Sherman Heath, by which your oratrix, authorized by her said husband, hypothecated the following described property, to wit: all and singular that lot or portion of ground, together with the three story brick dwelling house and back buildings thereon, and all the appurtenances thereunto belonging, situate in the square or block comprised between Canal and Burgundy streets, to wit: the continuation of Burgundy, now called Phillippa street, Common and Rampart, now called Circus street, being the north western half of lot number 68, as per plan made for the corporation of this city, and deposited in the office of

Michal De Armas, late notary public in said city of New Orleans, the 10th day of June, 1819, the said half lot measures 27 feet front on Canal street, by 120 feet deep, French measure, and is bounded on the side next to Rampart street by lot No. 69, and on the other side by the other half of said lot No. 68; all of which facts will more fully appear by reference to the said act of mortgage, a copy of which is annexed to the petition filed in this court, by Mary Heath, against your orator and oratrix to enforce said mortgage, and which is numbered 1121 on the records of this court, to be produced on the trial of this bill. That the consideration of the notes executed by the said Mary Bein, in favor of her said husband, more particularly described in said mortgaged act, and to secure the payment of which the said act of mortgage was executed, was the loan of money made by said Sherman Heath to the said Richard Bein, her husband, and the interest he agreed to pay for said loan. That the notes were drawn by your oratrix, as the surety of her said husband, and not as the principal, notwithstanding your oratrix is made the drawer, and the said Richard Bein the endorser of the same. That the said loan was not contracted for her benefit and advantage, nor did any part of the same accrue to her use, benefit, or advantage; but said loan was made for the benefit and advantage of her said husband. That your oratrix was merely the surety in said notes; that notwithstanding the act of mortgage declares, that the said loan was made for her sole or exclusive use and benefit, your oratrix avers the fact to be otherwise. Your orator and oratrix further shew unto your honors, that your oratrix is advised that, by the laws of the State of Louisiana, where the said notes were made, and the said act of mortgage was made and passed, that the same are null and void, and that the wife is incapable of entering into a suretyship for her husband, whatever the form of the instrument may be; and that an act of mortgage given by the wife upon her individual and separate property, to secure the payment of such an instrument of suretyship, or a debt contracted by her husband, is also null and void, notwithstanding it may be declared in the act of mortgage that it was for her exclusive use and benefit. And your orator and oratrix had well hoped that no dispute would have arisen touching the liability of your oratrix on said notes or either of them, or touching the validity of said act of mortgage, intended to assure the payment of said notes. *But now so it is*, may it please your honors, one Mary Heath, a subject of her majesty Queen Victoria, residing in the kingdom of Great Britain, pretending to be the mother and heir of said Shurman Heath, late deceased, who was also a subject of said Queen Victoria, and pretending, further, that she is owner of said mortgage, and two of the notes specified in said mortgage, to wit: the note for ten thousand seven hundred and eleven dollars and seventy-one cents, payable five years after date, and the note for five hundred and thirty-five dollars and fifty-nine cents, payable sixty months after date, drawn in favor of her said husband, and endorsed by him; and that she, the said Mary Bein, borrowed said money for her exclusive use and benefit, and that she is bound to pay said notes, and that said act of mortgage is valid and bind-

ing upon said Mary Bein; she, the said Mary Heath, did, on the *sixth* day of May, 1843, file her petition in this honorable court, praying for a writ of seizure and sale upon said act of mortgage, for the purpose of having the forementioned described property of your oratrix seized and sold to satisfy the two notes and mortgages above mentioned; and she, the said Mary Heath, did obtain a writ of seizure and sale upon said mortgage against your orator and oratrix, and Algernon Sidney Robertson, U. S. marshal in and for the eastern district of Louisiana, has seized the above mentioned property of your oratrix, and has advertised the same to be sold on the 29th day of June, 1843, in pursuance of the command of said court; all of which facts will more fully appear by reference to the records of this court and those of the office of said marshal. That if said sale is not arrested by the interposition of this honorable court, your oratrix will sustain great and irreparable injury; that all such actings and doings are contrary to equity and good conscience, and are calculated to harrass and oppress your oratrix. Your orator and oratrix expressly charge and aver the pretences set up by the said Mary Heath, or which may be set up by her, in opposition to the allegations herein set forth in regard to said loan, notes and mortgage, to be untrue, and aver the facts to be as stated by them. In tender consideration whereof, and to the end that justice may be done in the premises, and that the said Mary Heath may full, true, and perfect answer make to all and singular the premises hereinbefore set forth, and that as fully and particularly as if the same were here again repeated and interrogated, your orator and oratrix respectfully pray that your honors will grant unto the said Mary Bein a writ of injunction against the said Mary Heath, plaintiff in the said writ of seizure and sale, and against the said Algernon Sidney Robertson, marshal of this court, restraining and prohibiting the sale of said mortgaged property above described, in virtue of, and under said writ of seizure and sale, until the further order of this court; and on the final hearing, will your honors be pleased to decree the rescission and conciliation of the two promissory notes aforesaid, and the said act of mortgage, releasing the said Mary Bein from all liability thereon respecting; and order said proceedings upon said note and mortgage, and the sale advertised to take place on the 29th June, 1843, by the said marshal, to be arrested and perpetually enjoined. And will your honors grant unto your orator and oratrix the United States writ of subpœna, directed to the said Mary Heath and the said Algernon Sidney Robertson, marshal of this court, requiring them to answer this bill; and your orator and oratrix pray for such general and special relief in the premises, as the nature and circumstances of the case may require, and as shall be agreeable to equity and good conscience.

And as in duty bound will ever pray, &c.

(Signed,) EGGLESTON,
*Solicitor for complainants.*

Mary Bein, one of the complainants in the foregoing bill for injunction, being duly sworn, deposeth and saith, that the matters and things

set forth in said bill of complaint are true, and as she verily believes render an injunction necessary and proper.

(Signed,) M. BEIN.

Sworn to and subscribed before me, this 29th June, 1843.

(Signed,) THEO. H. McCALEB,
*U. S. Judge.*

I authorize my wife Mary Bein to sign the above bill, and prosecute the same.

(Signed,) R. BEIN.

And on the 22d day of June, 1843, the following entry was made of record.

*Entry from minutes.*

*Thursday, June 22nd,* 1843.

RICHARD BEIN & WIFE,
vs.
MARY HEATH. } No. 1133.

On motion of H. B. Eggleston, esquire, solicitor for the complainants, and on suggesting to the court that Mary Heath, the defendant, has obtained a writ of seizure and sale against the said complainants, and that A. Sidney Robertson, marshal of this court, has advertised the separate and undivided property of the said Mary Bein for sale, on the 29th day of this month, it is ordered by the court, that the said Mary Heath, who resided in the kingdom of Great Britain, through Elmore and King, esquires, her counsel, do shew cause at nine o'clock, A. M., on Tuesday, the 27th day of June, 1843, why an injunction should not be granted in favor of the said Mary Bein, staying the sale of said property as regards her by said marshal, and the execution of said writ of seizure and sale, until the further order of this honorable court, on the bill, bond, &c., exhibited to the said court.

*Marshal's return.*

Received June 22nd, 1843, and on the same day I served a copy of the within order on Elmore and King, esquires, in person, at New Orleans.

(Signed,) A. SIDNEY ROBERTSON,
*U. S. Marshal.*
By GEO. GAVIN,
*Deputy U. S. Marshal.*

And on the 27th June, 1843, the following entry was made of record:

*Rule.*

*Tuesday, June 27th,* 1843.

M. BEIN & R. BEIN, her husband,
vs.
MARY HEATH. } No. 1133.

The rule taken by the complainants in this case upon the defendants, to shew cause why an injunction should not issue, come on to be heard

this day; H. B. Eggleston, esquire, appearing for the complainants, and John R. Grymes, esquire, and Elmore and King, esquires, for the defendant. Whereupon, after some considerable progress, the further consideration of the rule was continued until to-morrow, at 9 o'clock, A. M.

And on the 28th, same month, the following entry was also entered of record:

*Judgment on rule.*

*Wednesday, June 28th,* 1843.

MARY BEIN & RICHARD BEIN, her husband,
vs.
MARY HEATH. } No. 1133.

The court this day resumed the consideration of the rule taken by the complainants upon the defendant, to shew cause why an injunction should not issue, continued from yesterday; whereupon, after argument of counsel, it is ordered and adjudged, that the said rule be made absolute, and that an injunction issue, as prayed for in complainants' bill, enjoining the marshal of this court from any further proceedings under the order of seizure and sale, issued out of this court in the case of Mary Heath vs. Mary Bein and R. Bein, her husband, upon complainants giving bond, with G. S. Hawkins and James McMasters as sureties, in the sum of three thousand dollars, conditioned according to law.

Judge's order. *Order of judge.*

Let an injunction issue in this case, as prayed for, upon the complainant giving bond, with Gilbert S. Hawkins and James McMasters as sureties, in the sum of three thousand dollars, to answer all damages which the defendant may sustain in consequence of said injunction being granted, should the same hereafter be dissolved.

(Signed,) THEO. H. McCALEB,
June 28th, 1843. *U. S. Judge.*

Injunction bond filed 28th June, 1843.

*Bond.*

BEIN & BEIN,
vs.
M. HEATH. } No. 1133.

Know all men by these presents, that we, Mary Bein, wife of Richard Bein, principal, and Gilbert S. Hawkins and James McMasters, both of the city of New Orleans, are held and firmly bound, jointly and severally, unto Mary Heath, of the kingdom of Great Britain, in the sum of three thousand dollars, lawful money of the United States of America, to be paid by the said Mary Heath, her heirs, executors, administrators and assigns; for which payment well and truly to be made we bind ourselves, and each of us, by himself and herself, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the twenty-first day of June, in the year of

our Lord eighteen hundred and forty-three. Whereas Mary Heath, on the sixth day of May, in the year of our Lord one thousand eight hundred and forty-three, presented a petition to the honorable the circuit court of the United States, fifth circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of seizure and sale against the said Mary Bein and Richard Bein, her husband, and the said writ of seizure and sale was granted, and came into the hands of Algernon Sidney Robertson, U. S. marshal of this district, for execution, and to enjoin which said writ of seizure and sale, the said Mary Bein, *the said Mary Bein* has applied for an injunction.

Now the condition of the above obligation is, that we, the above bounden Mary Bein, principal, and Gilbert S. Hawkins, James McMasters, sureties, will well and truly pay, to the said Mary Heath, the defendant in said injunction, and plaintiff in said writ of seizure and sale, all such damages as she may recover against us, in case it should be decided that the said injunction was wrongfully obtained.

(Signed,) M. BEIN, [L. S.]
" G. S. HAWKINS, [L. S.]
" JAMES McMASTERS. [L. S.]

Signed, sealed, and delivered in the presence of—
JOHN D. BEIN,
HY. D. RICHARDSON,

I authorize my wife to execute this bond. R. BEIN.

Witness to signature of J. McMasters.

H. B. PAGE, *D. Clerk.*

And afterwards, to wit, on the 28th June, 1843, the following writ of injunction was issued:

The President of the United States to Mrs. Mary Heath, and the marshal of the United States for the eastern district of Louisiana, or any of his lawful deputies, greeting:

*Injunction.*

MARY BEIN & RICHARD BEIN, her husband, vs. MARY HEATH. } No. 1133.

You are hereby strictly commanded and enjoined, that you desist from any further proceedings under the order of seizure and sale, sued out of this court at the suit of Mary Heath vs. Mary Bein and Richard Bein, her husband, No. 1121 of the docket, and you are strictly prohibited and restrained from proceeding in the sale of the mortgaged property seized under the same, until the further order of this court. And what you do in the premises you make due return thereof according to law.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 28th June, A. D. 1843, and [SEAL.] of the independence of the United States the 65th year.

DUNCAN N. HENNEN, *Clerk.*
By H. B. PAGE, *Deputy Clerk.*

*Marshal's return.*

Marshal's return. Received 29th June, 1843, and obeyed the commands of the within writ.

(Signed,) A. SIDNEY ROBERTSON, *Marshal.*
By J. P. WALDEN, *Dep'ty U. S. Marshal.*

And on the 28th June, 1843, the following writ of subpœna was issued:

UNITED STATES CIRCUIT COURT:

MARY BEIN & R. BEIN, vs. MARY HEATH. } Subpœna in chancery.

*Subpœna in chancery.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, greeting: You are hereby commanded to summon Mrs. Mary Heath and A. Sidney Robertson, marshal, to appear before the honorable the judges of the ninth judicial district and circuit of the United States of America, at a circuit court, to be holden on 1st Monday of August, 1843, then and there to answer a bill in chancery, filed against them, wherein Mrs. Mary Bein and Richard Bein, her husband, are complainants, and said Mrs. Mary Heath and A. S. Robertson are defendants; herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this the 28th day of June, in the [SEAL.] year of our Lord one thousand eight hundred and forty-three, and in the sixty-seventh year of American independence.

(Signed,) DUNCAN N. HENNEN, *Clerk.*
By H. B. PAGE, *Deputy clerk.*

*Marshal's return.*

Marshal's return. Received 29th June, 1843, and on the 6th July I served a copy of the within subpœna in chancery on Elmore and King, esquires, the att'ys of Mary Heath, in person, at New Orleans.

(Signed,) A. SIDNEY ROBERTSON,
*U. S. Marshal.*
By GEO. GAVIN,
*Deputy U. S. Marshal.*

*Order in chancery rule docket.*

And the following order was entered of record on the chancery rule docket. *June 28th*, 1843.

MARY BEIN & R. BEIN, her husband, vs. MARY HEATH. }

On motion of defendant's solicitors, it is ordered by the court, that the

policy of insurance on the property named in complainants' bill, be forthwith deposited in court; and it is further ordered, that the defendants do pay over to the marshal of this court the rents, &c., of said property, as they accrue, to be by him deposited in court.

*Policy of insurance.*

Policy of insurance, filed June 28th, 1843.

Fire, No. 12,997.—The Merchants' Insurance Company, Mary Bein, on a dwelling house, &c., one year, January 19th, 1843, $7,500 a ¾ per cent. - - - - - - - - $56 25

Policy, - - - - - 1 50

57 75

Expires January 19th, 1844.

NEW ORLEANS:

No. 12,997.—The Merchants' Insurance Company. By this policy of Insurance, the Merchants' Insurance Company, in consideration of fifty-six $\frac{25}{100}$ dollars, to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure Mary Bein against loss and damage by fire to the amount of seventy-five hundred dollars on a brick building, covered with slates, situated on the south side of Canal street, between Phillippa and Circus streets, being the third house from Circus street, 2nd municipality, New Orleans.

| | |
|---|---|
| Amount of six thousand dollars, - - - - - | $6,000 |
| On the back buildings, of same materials, am't of | 1,500 |
| Total, seven thousand and five hundred dolls. | $7,500 |

And the said company do hereby promise and agree to make good unto the insured, her executors, administrators, and assigns, all such loss or damage, not exceeding in amount the sum hereby insured, as shall happen by fire to the property as above specified, during one year, to wit, from the nineteenth day of January, one thousand eight hundred and forty-three, (at twelve o'clock, at noon,) the said loss or damage to be estimated according to the true and actual value of said property at the time the same shall happen, and to be paid within sixty days after due notice and proof thereof made by the insured, in conformity to the conditions of this policy: provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire, which may happen, or take place, by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or by an earthquake or hurricane. And provided further, that in case the insured shall have already any other insurance against loss by fire on the property hereby insured, not notified to this corporation, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect. And if the said insured, or her assigns, shall hereafter make any other insurance on the same pro-

perty, and shall not with all reasonable diligence give notice thereof to this corporation, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this policy any greater portion of the loss or damage sustained, than the amount hereby insured shall bear to the whole amount insured on said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned property or premises shall at any time after the making, and during the time this policy would otherwise continue in force, be appropriated, applied, or used to or for the purpose of carrying on, or exercising therein, any trade, business, or vocation, denominated hazardous or extra hazardous, or mentioned in the memorandum or specification of those termed special in the proposals on the back of this policy, or for the purpose of storing therein any of the articles, goods or merchandize, in the same proposals denominated hazardous or extra hazardous, or included in the memorandum or specification aforesaid, unless herein otherwise specially provided for, or hereafter agreed to by this corporation, in writing, to be added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no force or effect. And it is moreover declared that this insurance is not intended to apply to or cover any books of accounts, written securities, deeds, or other evidences of title to land, nor to bonds, bills, notes or other evidences of debt, nor to money or bullion. And that this policy is made and accepted, in reference to the conditions and proposals hereto annexed, which are to be used and resorted to, in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for. This insurance, (the risk not being changed,) may be continued for such further term as shall be agreed on, provided the premium for the same be paid and endorsed on this policy, or a receipt given for the same. The interest of the insured in this policy is not assignable, unless by consent of this corporation manifested in writing, and in case of any transfer, or termination of the insured, either by sale or otherwise, without such consent, this policy shall henceforth be void and of no effect.

In witness whereof the Merchants' Insurance Company have caused these presents to be signed by their president, and attested by their secretary, at the city of New Orleans, this nineteenth day of January, in the year of our Lord eighteen hundred and forty-three.

| | |
|---|---|
| $7,500 *a* ¾ per cent. | $56 25 |
| Policy, - - - | 1 50 |
| | $57 75 |

Attest, P. M. S. CUCULLU, *President*.
(Signed,) JOHN PEMBERTON, *Secretary*.

Endorsed: For value received, I hereby transfer all my right, title, and interest to the within policy to Mrs. Anna Hawkins.

(Signed,) M. BEIN.
Authorized by her husband, R. BEIN.
Transfer approved. JOHN PEMBERTON, *Secretary.*

*Transfer of Insurance.*

I hereby transfer all my right, title, and interest to the within policy of insurance to the order of U. S. circuit court of Louisiana, for the eastern district, to abide the result of the suit of Mary Heath vs. Mary Bein and Richard Bein.

*New Orleans, June 28th*, 1843.

(Signed,) ANN HAWKINS.
Authorized by her husband, G. S. HAWKINS.
Transfer approved. (Signed,) P. M. S. CUCULLU.

And on the 16th December, 1843, the following entry was entered of record:

*Saturday, 16th December*, 1843.

MARY BEIN & R. BEIN, her husband, vs. MARY HEATH. } No. 1133.

*Order to open commission.*

On motion of W. W. King, esquire, of counsel for defendant, and on suggesting to the court that the answer has been returned under the commission issued in this case, ordered that leave be granted to open and file the same.

Commission issued July 19th, 1843.

*Commission.*

Circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, to Henry Anderson, esq., or Mathew Plummer, American consul at Newcastle upon Tyne:

Know ye, that reposing special trust and confidence in *in* your integrity and ability, we hereby authorize and require you that you call and cause to come before you, Mary Heath, and her duly qualify on oath, to her answer to the bill filed in this case, now depending in the said court, wherein Mary Bein and Richard Bein, her husband, are plaintiff, and said Mary Heath is defendant; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this [SEAL.] nineteenth day of July, anno domini 1843, and in the sixty-seventh year of the independence of the United States.

(Signed,) DUNCAN N. HENNEN, *Clerk.*
By H. B. PAGE, *Deputy Clerk.*

*Answer of Mary Heath.*

Answer of Mary Heath, filed Dec. 16th, 1843.

To the honorable the judges of the circuit court of the United States of America, for the fifth judicial circuit, holding sessions in the city of New Orleans in and for the eastern district of Louisiana, in chancery.

The answer of Mary Heath, defendant, to the bill of complaint and injunction of Mary Bein and Richard Bein, her husband, authorizing the same. This defendant, now and at all times hereafter, saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for her to make answer unto, this defendant answering, saith:

That the said complainant, Mary Bein, in her said bill of complaint, hath not set forth any sufficient cause for the issuance of the injunction as prayed for in said bill, or for any equitable relief whatever from this honorable court; that all and every of the matters in said complainants' bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity; and this defendant hopes she shall have the same benefit of this defence as if she had demurred to the complainants' bill; and this defendant saith, that the said complainants' bill is improperly and irregularly framed, inasmuch as the said Richard Bein is made a complainant therein jointly with the said Mary Bein, whereas he ought to have been made a defendant; and this defendant claims the same benefit of this defence as if she had demurred and assigned the same for cause of demurrer to the said complainants' bill; and this defendant saith, that in the month of February, in the year of our Lord one thousand eight hundred and thirty-eight, having been informed that the usual and legal rate of interest for money lent on the mortgage of houses and land was much higher in the State of Louisiana than in England, she sold out of the English funds stock belonging to her to the amount of two thousand and forty pounds six shillings and six pence sterling, or thereabouts, and then sent the same in specie, by the said Sherman Heath, to New Orleans, to be there or elsewhere, in the State of Louisiana, invested on a good and valid mortgage of houses, or lands, or both, at the legal rate of interest, and not to be lent to any person upon his or her personal security, or otherwise applied or disposed of in any manner whatsoever.

And this defendant further answering saith, that she has been informed and believes the said complainant, Mary Bein, before her marriage with the said Richard Bein, owned a large property in her own right, and that she remained the separate owner of the said property after her marriage; that by the contract entered into between the said parties before their marriage, it was expressly stipulated and agreed between them, that each party reserved the right of selling and disposing in any

manner they might think proper after their marriage, and with the mutual consent of each other, all or any part or parts of the property enumerated and described in the said marriage contract, and to dispose of the funds arising from such sale or sales in any manner they might think proper, without the intervention of any judicial proceeding whatever; that the said Mary Bein having thus power of disposing of her property with the consent of her husband, and being desirous of raising money on her separate property, did, with the consent of her said husband, borrow of Sherman Heath, who was the son and agent of this defendant as aforesaid, the sum of ten thousand seven hundred and eleven dollars and seventy-one cents (being the proceeds of the said sum of two thousand and forty pounds six shillings and six pence belonging to this defendant, and sent out by her to New Orleans as aforesaid,) for which she promised to pay ten per cent. per annum interest, and at the end of five years from the date of the loan, to wit, May the first, in the year *in* of our Lord one thousand eight hundred and thirty-eight, to repay the principal sum; and she further bound herself to pay the interest semi-annually, for which purpose she executed her promissory notes, endorsed by her said husband, in conformity with the said contract of loan, and mortgaged a portion of her separate property with authorization of her said husband; that on the eighth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, the said Sherman Heath, as the agent of this defendant, paid into the hands of the said Mary Bein the said sum of ten thousand seven hundred and eleven dollars and seventy-one cents, by causing to be delivered to her a checque upon the same upon the bankers with whom it was then deposited; and thereupon the said Mary Bein did, on the said eighth day of May, one thousand eight hundred and thirty-eight, execute an act of mortgage with the authorization of her said husband, hypothecated the said separate property for securing the said sum of, and interest; that the said Sherman Heath died on the fifth of September, in the year of our Lord one thousand eight hundred and thirty-nine, having first made his last will and testament, dated the ninth day of September, one thousand eight hundred and thirty-eight, wherein he declared that the said mortgage and money thereby secured belonged to this defendant, and that his name was used only because the power of attorney from this defendant had not been sent to him; that for four years the contract was complied with, and the semi-annual instalments of interest regularly paid; that at the maturity of the note given for the principal sum borrowed, and the one for the last instalment of interest, the said Mary Bein failed to make payment therefor; whereupon this defendant commenced proceedings in the manner provided for by the laws of the State of Louisiana, for the purpose of having the said property sold to satisfy the mortgage debt; for a more definite understanding of the said proceedings at law, reference is here made to the suit of this defendant, against the said Mary Bein and the said Richard Bein, on the law side of this honorable court, and of the docket suit number 1121, commenced on the sixth day of May, in the year of our Lord one thousand eight hundred and forty-three; upon the

issuance of the execution in the said suit at law, and upon the seizure of the property, the said complainant filed her said bill of complaint and injunction, alleging, amongst other things, that the said loan was not made to her, but to her husband, and that she was merely surety for husband, and not bound by her contract, and that the said mortgage is null and void; this defendant has been informed, and believes, that it is not true that the loan was made to the said Richard Bein, but that it was in fact made to the said Mary Bein for her sole use and benefit; that shortly after the said loan was made to the said Mary Bein by the said Sherman Heath, who acted on the behalf and as the agent of this defendant in lending her money, this defendant received a letter written by the said Sherman Heath to his brother Edward Heath, containing a request that the same should be communicated to this defendant, in which, after speaking of the great circumspection and caution he had used in the investment of this defendant's money, he states expressly that the money had been lent through his agency to the said Mary Bein, the complainant; the said letter is hereunto annexed, and marked exhibit A.

And this defendant further saith, that she, this defendant, in or about the month of December, in the year of our Lord one thousand eight hundred and thirty-eight, received from the said Sherman Heath a letter written by him, dated at New Orleans, the 3rd November, 1838, enclosing ninety-nine pounds six shillings and five pence, being the amount (after deducting lawyer's fee for examining the title of the said complainant, Mary Bein, to the said property) of the first six months' interest of said money of this defendant so lent as aforesaid; and also in or about the month of June, in the year one thousand eight hundred and thirty-nine, another letter written by him, dated at New Orleans, this 7th May, 1839, enclosing one hundred and eleven pounds eleven shillings and three pence, being the second half-year's interest due on the said money of this defendant; and in which two last mentioned letters the said Sherman Heath distinctly states the said interest so remitted as aforesaid, and the principal money in respect of which the same had become due, to be the property of, and to belong to, this defendant. The said two letters are hereunto annexed, and marked respectively exhibit B & C.

This defendant hath been further informed, and believes, that the said Sherman Heath did not lend, nor would he have lent, the said money to the said Richard Bein, not considering him sufficiently solvent; nor did he accept, nor would he have accepted, the said Mary Bein as surety for her husband, well knowing that by the laws of Louisiana wives could not be sureties for their husbands.

That the said Mary Bein represented that she wished to borrow the money for her own separate use and benefit, and to charge her separate estate for the payment thereof. That the said Sherman Heath, believing her representations and confiding therein, did lend the said Mary Bein the sum afore mentioned for her own separate use and benefit; that the money was actually paid into the hands of the said Mary Bein; that she received the bank cheque for the money into her own hands, and afterwards, out of the presence of the said Sherman Heath, and when it was

entirely beyond his control, did, without his suggestion, contrivance, or knowledge, with her own hand endorse the said cheque in blank, to whom this defendant does not know, but the fact of the endorsement came to the knowledge of this defendant from the cheque after it was taken up from the bank; that it was for the loan thus made that the said Mary Bein executed the mortgage above mentioned upon her separate property; and in the said mortgage, which is a notarial act, importing a confession of judgment, she expressly declares, that the loan was made to her for her sole use and benefit. And this defendant hath been further informed, and believes, that in the year one thousand eight hundred and forty-one the said Richard Bein became insolvent and took the benefit of the laws in force in the State of Louisiana respecting insolvent debtors, and that in the schedule of debts and creditors, then filed of record by the said Richard Bein, the name or names of neither this defendant, nor of the said Sherman Heath, or his heirs, executors, or other representatives, is or are inserted.

That this defendant hath been informed, and believes, that since the said Richard Bein so became insolvent, and took the benefit of the laws of Louisiana for a release from his debts, the said complainant Mary Bein hath paid, or caused to be paid, to this defendant, two half-year's interest on the said sum of ten thousand seven hundred and eleven dollars seventy-one cents, so advanced to her, the said Mary Bein, as aforesaid.

This defendant believes that the said transaction was entered into by the said Mary Bein for her separate use and benefit, that the proceeds went into her hands, and that she reaped the benefits resulting from the contract; and even if the said proceeds reached the hands of the said Richard Bein (which this defendant by no means admits,) this defendant submits that, inasmuch as the same was without the knowledge, privity, or consent of the said Sherman Heath, or of this defendant, this defendant ought not to be in anywise bound or affected thereby.

And this defendant denies all and all manner of unlawful combination wherewith she or the said Sherman Heath is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' said bill of complainant contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct; and humbly prays that the relief asked by the complainants' bill be refused, that the injunction prayed for be dissolved, and this defendant be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained; and as in duty bound will ever pray, &c., &c.

(Signed,) MARY HEATH.

ELMORE & KING,

*Solicitors for defendant.*

Mary Heath, the defendant herein, being duly sworn, doth depose, and say, that the matters and things, in this her answer set forth and alleged, so far as they are stated upon her own knowledge, are correct and true, and so far as stated upon information from others, she believes them to be true.

Sworn before me, this 1st day of November, 1843.

(Signed,) P. R. BATSON, *J. P.*

*For the town and county of Newcastle on Tyne.*

AMERICAN CONSULATE, NEWCASTLE UPON TYNE.

I hereby certify, that T. R. Batson, before whom the annexed document was sworn, is a justice of the peace residing in this town, and that to all acts and deeds by him attested full faith and credit are due. I further certify, that Mary Heath did sign the said document in my presence.

Given under my hand and official seal, this first day of November, [SEAL.] 1843, and sixty-eighth year of the independence of the U. S. A.

(Signed,) MAT'W PLUMMER.

Exhibit A.—(No. 1.)

*New Orleans, 11th May*, 1838.

Dear Edward. Having finished the work of investing the £2,040 6 6 of our mother's, I now give particulars, which you will please transmit to her.

First, there seems to be no doubt of the validity of mortgages made to foreigners in the State of Louisiana.

Secondly, the legal rate of interest is 10 per cent. per annum, and that any one contracting to pay more than 10 per cent. may avail himself of the law, and refuse to pay the excess.

Thirdly, in proportion as the length of time for which a loan is made is increased, so is the rate of interest which parties offering unexceptionable security are willing to pay decreased.

Fourth, I have considered the goodness of the security to be paramount, and allow no rate of interest to induce me to incur risk.

Fifth, that a party not holding a power of attorney of another cannot act for him, and that when a mortgage is accepted by one person for another, the power is attached to the mortgage papers.

Sixthly, that to wait for a power to be sent from England would lose about £100 interest, and there is no likelihood of our failing for 6 months.

Seventhly, that all mortgages on property, to be valid, must be recorded in the mortgage office of the parish, and before a notary will execute a mortgage deed, he obtains from such office a certificate of freedom from mortgage, or of what mortgages there may be on it. We sold the sovereigns for $10,711 71, which sum on the 1st ulto., we loaned to Mrs. Mary Bein for 5 years, she paying interest at the rate of ten per cent. per annum; she giving one bill at five years, for $10,711 71 payable in specie, or its equivalent, for the principal, and 10 bills, each for $535 59,

at from 6 to 60 months for the semi-annual interest, payable in specie, or its equivalent, when sterling bills of exchange are above 10 per cent. premium, for Louisiana funds, (i. e. bank paper:) all these bills are secured to me by an act of mortgage, passed before David L. McCay, notary public of this city, hypothecating a certain house and lot situated at the corner of Canal and Circus streets, the property of Mrs. Bein, and now valued at $20,000, paying a rent to her $1800 per annum, and insured for $11,000, the policy for which is transferred to me. The following is the opinion of my legal adviser, (who, so far, has given correct advice.)

"I have carefully examined the title of Mrs. Mary Bein to the lot mortgaged to Sherman Heath, and the mortgage this day signed, and am of opinion that her title is a legal one, and that the mortgage is executed in due form of law.

Signed, J. WEIGHTMAN SMITH,
*Attorney at law.*"

*New Orleans, 10th May*, 1838.

Mrs. Mary Bein is moreover a woman of substance, by her marriage contract, which I have seen; she was then (4 year ago,) possessed of property worth, at a moderate valuation, $88,000, and it is a difficult thing for husbands to spend wife's property in this State, the law being very jealous of wife's rights. 2 other houses belonging to her, situated alongside of the one in question, are the basis of stock in the Union Bank, and they are held by the same title. A bank's passing a title is generally considered a sufficient proof of its validity. There is an agreement between Mrs. Bein and myself, that when the mother's power of attorney arrived, that the mortgage shall be transferred from me to the mother, such being done by Roberts having her joint power with me, and accepting the mortgage from me for her. We pass to the mother's credit $10,711 73, being the proceeds of sale of the sovereigns, and to her debit $10,711 71, the amount lent, and $50 lawyer's fees; such charges as you have paid, insurance for instance, you must pass to the mother's debit, and not to mine. I will send an order for the payment of the interest, as it becomes due, the amount in sterling will vary according to the rate of exchange. By my books I find the estimate of £408 to be £32 odds, to my disadvantage, which must arise from the variation of interest by your transfers to B. H. & Co., but I can no more tell how, than fly; do pray let the matter rest, and so pass what you consider your loss to the deficiency in book-keeping acccount. You did right in not lending Wylie money; never do it without my written order, The new watch is thicker instead of thinner than the other, so I think I shall sell it.

Yours, truly,
(Signed,) SHERMAN HEATH.

Exhibit B.—(No. 2.).

*New Orleans, 3d November*, 1843.

MRS. MARY HEATH:

My dear mother:—I have written so frequently to the various members of the family, that neither my brains will furnish new matter, nor

have I leisure to spin a long yarn to you. Now, the cause of my writing at all, is to enclose you our bill of exchange on E. Heath & Co., for £99 6 5, being the first 6 month's interest of your money, which we invested here. The following is a statement:

| | |
|---|---|
| $10,711 71 for 6 months, at 10 per cent per annum, | $535 59 |
| Less lawyer's fees, examining the titles, - - | 50 00 |
| | $485 59 |
| £99 6 5, at 10 per cent. exchange, - - - | $485 59 |

Write your name on the back of the bill, and send it to Edward, he will then give you credit for it; the next six months' interest will be about £110, making an income of £220 from £2,040; with an increase of capital, in five years, of from £100 to £180, as the exchange may be at the time of remitting back to you the principal; you see it would have been to your advantage to have given us £5,000 as I wanted. Most likely it will be several years before another opportunity of making the profit by sending specie, will again occur; but 10 per cent. interest on good mortgage can be obtained at any time. All I can do in return for your cares and troubles spent over my youth is, to give my labor and business knowledge; whenever therefore you think fit to use it, you may be sure it will give me great pleasure, more especially as I know all your surplus income is bestowed in promoting the welfare and comfort of some of the family.

Your affectionate son,

(Signed,) SHERMAN HEATH.

Exhibit C.—(No. 3.)

*New Orleans, 7th May*, 1839.

My dear Mother:—I have now the pleasure to enclose you remittance for the interest of your money, due on the fifth, $535 59, at 8 per cent. £111 11 3. I have yours of the 20th January, and am glad you seem so satisfied with my exertions on behalf of the family; such is the only reward I wish; and certainly disappointing when not obtained, you are right to divide your stakes. I would write more, but Bob and 2 ships going off, and 2 ships arriving, keep my hands so busy I have not time.

Your affectionate son,

(Signed,) SHERMAN HEATH.

And afterwards, to wit, on the 17th January, 1844, the following entry was entered of record:

*Wednesday, 17th January*, 1844.

*Int'y order.*

RICHARD BEIN & MARY BEIN, his wife,
vs.
MARY HEATH. } No. 1133.

On motion of R. Hunt, esq., it is ordered, that he have leave to file exceptions herein.

And afterwards, to wit, on the 26th day of January, 1844, the following entry was entered of record :

R. Bein & Mary Bein, his wife, vs. Mary Heath. } No. 1133.

*Rule.*

On motion of counsel for the defendant, it is ordered by the court, that the plaintiffs shew cause, on Saturday, the 3d February next, why the injunction granted in this case should not be dissolved, and the suit dismissed upon the grounds, to wit:

First.—The defendant has fully answered the bill of complaint, and shews there is no equity in the original bill.

Second.—The plaintiffs have failed to comply with the order of court, respecting the surety to be given for the taking out of the injunction.

Third.—The plaintiffs have not kept the buildings insured, and the policy thereof regularly transferred, and deposited in court; nor have they deposited the rents, or any statement of them, as they were required by the order of court.

*Marshal's return.*

Received January 26th, 1844, and on the 31st January, 1844, served copies of the within on H. B. Eggleston and Randall Hunt, esquires, in person.

(Signed,) WM. STILES,
*Dpty. U. S. Marshal.*

Policy of Insurance, filed January 27th, 1844.

*Fire.*

Policy No. 1962.—The Western Marine and Fire Insurance Company—Mary Bein, house, one year, January 20th, 1844, $6,000; per ¾ per cent. $45. Policy $1 50; amount dollars 46 50; expires January 20th, 1845.

No. 1962.—New Orleans. The Western Marine and Fire Insurance Company. By this policy of insurance, the Western Marine and Fire Insurance Company, in consideration of forty-five dollars to them paid by the insured hereafter named, the receipt whereof is hereby acknowledged, do insure, (not exceeding in each case the sum or sums hereinafter recited, upon the property herein described, in the place or places herein set forth, and not elsewhere, unless allowed by endorsement previously made,) Mary Bein, against loss and damage by fire, to the amount of six thousand dollars, on a three story dwelling-house covered with slate; situated on the southern side of Canal street, being the third house from Circus street, eastwardly, to amount of $5,000; and on the kitchen belonging thereto to amount of 1,000 for one year. And the said company do hereby promise and agree to make good unto the insured, her executors, administrators, and assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, during one year, to wit, from the

twentieth day of January, one thousand eight hundred and forty-four, (at twelve o'clock at noon,) unto the twentieth day of January, one thousand eight hundred and forty-five, (at twelve o'clock at noon,) the said loss or damage to be estimated according to the true intent and actual value of said property at the time the same shall happen, and to be paid within sixty days after due notice and proof thereof made by the insured, in conformity to the conditions of this policy. Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire, which may happen to take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or by an earthquake or hurricane. And provided further, that in case the insured shall have already any other insurance against loss by fire on the property hereby insured, not notified to this corporation, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect. And if the said insured or her assigns shall hereafter make any other insurance on the same property, and shall not with all reasonable diligence give notice thereof to this corporation, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease, and be of no further effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this policy any greater portion of the loss or damage sustained, than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned property or premises shall at any time after the making, and during the time this policy would otherwise continue in force, be appropriated, applied, or used, to or for the purpose of carrying on, or exercising therein, any trade, business, or vocation denominated hazardous or extra hazardous, or mentioned in the memorandum or specification of those termed special in the proposals on the back of this policy; or for the purpose of storing therein any of the articles, goods, or merchandize, in the same proposals denominated hazardous or extra hazardous, or included in the memorandum or specification aforesaid, unless herein otherwise specially provided for, or hereafter agreed to by this corporation, in writing, to be added to, or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no effect or force. And it is moreover declared, that this insurance is not intended to apply to, or cover, any books of account, written securities, deeds, or other evidences of title to land, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion. And that this policy is made and accepted in reference to the following conditions and proposals hereto annexed, which are to be used and resorted to, in order to explain the rights and obligations of the parties *of the parties* hereto, in all cases not herein otherwise specially provided for. This insurance, (the risk not being changed,) may be continued

for such further term as shall be agreed on, provided the premium for the same be paid and endorsed on this policy, or a receipt given for the same. The interest of the insured in this policy is not assignable, unless by consent of this corporation, manifested in writing; and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this policy shall henceforth be void and of no effect. In witness whereof, the Western Marine and Fire Insurance Company have caused these presents to be signed by their president, and attested by their secretary, at the city of New Orleans, this twentieth day of January, in the year of our Lord one thousand eight hundred and forty-four.

Attest, GEO. C. LAWRASON, *Secretary.*

$6,000 at ¾ per cent.—$45. Policy $1 50. Amount $46 50.

(Signed,) L. MATTHEWS, *President.*

*Transfer of policy [of] insurance.*

I hereby transfer all my right, title, and interest in the within policy of insurance to the United States circuit court, for the eastern district of Louisiana, to abide the judgment of said court in the suit of Mary Heath vs. Mary Bein & Richard Bein.

(Signed,) M. BEIN.

Authorized by her husband, R. BEIN.

Approved, (Signed,) L. MATTHEWS, *President.*

*New Orleans, January 24th*, 1844.

And afterwards, to wit, on the 1st day of February, 1844, the following was entered of record:

*Friday, February 1st*, 1844.

*Entry on minutes.*

M. BEIN & R. BEIN, vs. M. HEATH. } No. 1133.

On motion of R. Hunt, esquire, of counsel for plantiffs, ordered that the exception filed this day be filed nunc pro tunc, as of 17th January, 1844.

*Exceptions.*

Exceptions filed per order of court, (nunc pro tunc, Feb'y 1, 1844.) *January 17th*, 1844.

M. BEIN & R. BEIN, vs. HEATH & als. } In chancery.

Exception of complainants to the answer of the defendant to the bill of complaint filed in this case.

First.—The complainants except to all that part of the answer of defendant, beginning with and including the words—that shortly, &c., in the ninth line of the sixth page of the said answer, and ending with, and including the words—exhibits B and C, on the 15th line of the

seventh page, and except to the exhibit B and C, which are annexed to said answer as impertinent.

Second.—The complainants except to all that part of the answer of defendants containing the exhibit (A) as impertinent. And these exceptants except to the parts of the answer above set forth for impertinence, and pray that the same may be expunged from the answer.

(Signed,) HUNT & EGGLESTON,
*Attorneys.*

And afterwards, to wit, on the 3rd day of February, 1844, the following was entered of record:

*Saturday, d February*, 1844.

*Judgment dismissing rule.*

M. B. & R. Bein, vs. M. Heath & als. } No. 1133.

After argument on the rule taken by defendants herein on the 20th January, 1844, it appearing to the court that the plaintiffs have filed their policy of insurance, and an account of rents up to date; since the taking of the rule, it is ordered by the court, that the rule be discharged, and that the plaintiffs M. Bein and R. Bein pay the costs of the rule.

*Int. decree.*

And afterwards, to wit, on the 17th February, 1844, the following was entered of record:

*Saturday, 17th February*, 1844.

Richard Bein & Wife, vs. Mary Heath. } No. 1133. In chancery.

On motion of H. B. Eggleston, of counsel for complainants, and on suggesting to the court that the bills for the repairs of the house and painting of the same are still due, and are in the hands of the marshal, A. S. Robertson, it is ordered by the court, that the said A. S. Robertson, marshal of this court, do forthwith pay, out of the funds in his hands deposited by Randall Hunt, esquire, the tenant of said house, as the rent thereof, the said bills for the repair and painting of the same.

*Marshal's return.*

Marshal's return. Received February 21st, 1844, and same day served a copy of the within rule on A. S. Robertson, U. S. M., by handing the same to him in person.

(Signed,) WM. K. STILES,
*U. S. Deputy Marshal.*

*Judgment on exceptions.*

And afterwards, to wit, on the 24th February, 1844, the following was entered of record:

BEIN & WIFE,
vs.
M. HEATH & als. } No. 1133.

The exception set for trial this day came on for hearing, when, after argument of counsel, it is ordered, that said exceptions be dismissed at plaintiff's costs.

On motion of H. B. Eggleston, esquire, of counsel for plaintiff, it is ordered, that leave be granted to file replications herein.

*Replication.*

And on the same day the following replication was filed:

RICHARD BEIN & MARY BEIN, his wife,
vs.
MARY HEATH.

CIRCUIT COURT OF THE UNITED STATES:

The replication of Richard Bein and Mary Bein, complainants, to the answer of Mary Heath, respondent.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or *devised*, is true. All which matters and things these replicants are and will be ready to aver due proof, as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

(Signed,) EGGLESTON & HUNT, *Solicitors.*

And afterwards, to wit, on the 25th April, 1844, the following entry was entered of record:

*Thursday, April 25th*, 1844.

R. BEIN & MARY BEIN,
vs.
MARY HEATH. } No. 1133.

On motion of H. B. Eggleston, and on filing a consent, it is ordered, that a commission issue herein, directed to Duncan N. Hennen, United States commissioner, to take depositions of certain witnesses.

And afterwards, to wit, the following entry was entered of record, May 29th, 1844.

*Wednesday 29th*, 1844.

*Entry from minutes.*

RICHARD BEIN & MARY BEIN, his wife,
vs.
MARY HEATH & als.

This cause came on this day of trial, H. B. Eggleston appearing for the complainants, and W. W. King for the defendants; whereupon, the records of the case filed in this court, at the suit of Mary Heath vs. Mary Bein and Richard Bein, No. 1121, and the testimony taken under commission in this case, were offered in evidence by the complainants, and thereupon the cause proceeded; when, after some progress therein, the same was continued until to-morrow, at nine o'clock, A. M.

*Entry from the minutes.*

And afterwards, to wit, on the 30th May, 1844, the following entry was entered of record:

*Thursday, May 30th*, 1844.

RICHARD BEIN & MARY BEIN, his wife,
vs.
MARY HEATH.

*Entry from minutes.*

This cause was this day resumed before the court, when, after some progress, the same was continued until to-morrow, and on the same day the following entry was also entered of record:

*Entry from minutes.*

R. BEIN & M. BEIN, his wife,
vs.
MARY HEATH & als.
No. 1133.

At two o'clock, P. M., this cause was resumed, when the plaintiffs proceeded to address additional evidence, and offered the following documents, viz., a bill of sale of lot from J. B. Hullin to widow Liddle, and an act of mortgage from Mrs. Bein to Sherman Heath, when the testimony on the part of the complainants closed; whereupon the defendants offered the following in evidence, to wit, an agreement between the parties, and the check from Heath to Mrs. Bein annexed to it; the testimony of J. W. Smith, esquire; sale of property of slave, from R. Bein to Mrs. Mary Bein; the evidence taken before the honorable O. P. Jackson, and certificates of mortgage; when the counsel of the complainant moved the court for bills of exceptions, as to the admissibility of said testimony, reserving and excepting thereto.

And afterwards, to wit, on the 31st May, the following entry was entered of record:

*Friday, May 31st, 1844.*

*Entry from minutes.*

R. Bein & M. Bein, his wife, vs. Mary Heath & als. } No. 1133.

This case was this day resumed before the court, when the counsel for the defendants or respondents offered in evidence the insolvent proceedings had in the first judicial district court of this State, in the suit of Richard Bein and Archibauld Bein vs. their creditors, and the creditors of R. and A. B. Bein, and having offered all the letters appended to the answer of the defendant, Mary Heath, the counsel for the complainant objecting thereto, it is ordered by the court, that the reception of the said letters be rejected; when the case was continued until to-morrow, at nine o'clock, A. M.

And afterwards, to wit, on the 1st June, 1844, the following entry was entered of record:

*Saturday, 1st June, 1844.*

*Entry from minutes.*

R. Bein & Mary Bein, his wife, vs. Mary Heath & als. } No. 1133.

This case was this day resumed before the court, when the counsel for the defendants offered the marriage contract between Richard Bein and Mary Bein, his wife; when, after some further progress in the cause, the same was continued until Monday, the 10th June, 1844, at nine o'clock, A. M.

And on the 10th June, 1844, the following entry was entered of record:

*Monday, June 10th, 1844.*

*Entry from minutes.*

Bein & Wife, vs. Mary Heath & als. } No. 1133.

This cause was resumed this day, when, after some progress, was continued until Monday next, at ten o'clock, A. M.

And afterwards, to wit, on the 17th June, 1844, the following entry was entered of record:

*Entry from minutes.*

R. Bein & M. Bein, his wife, vs. Mary Heath & als. } No. 1133.

On motion of W. W. King, esquire, of counsel for defendants, it is ordered that the case be continued until to-morrow, at nine o'clock, A. M.

And afterwards, to wit, on the 18th June, 1844, the following entry was entered of record:

*Tuesday, June 18th, 1844.*

*Entry from minutes.*

R. Bein & M. Bein, vs. Mary Heath & als. } No. 1133.

This case was this day resumed, when, on motion of W. W. King, esquire, of counsel for defendants, leave is granted to withdraw the mortgage certificates, shewing the cancellation of mortgages in favor of Slidel and Stewart, heretofore offered in evidence, and after some further progress made herein, the cause was continued until Monday next, at 9 o'clock, A. M.

And afterwards, to wit, on the 24th June, 1844, the following entry was entered of record:

*Monday, June 24th, 1844.*

*Entry from minutes.*

Bein & Wife, vs. Mary Heath. } No. 1133.

This case was this day resumed before the court, the testimony being concluded on the part of plaintiffs and defendants, the argument of counsel proceeded, when, after considerable progress therein, the same was continued until to-morrow, at nine o'clock, A. M.

And afterwards, to wit, on the 25th day of June, 1844, the following entry was entered of record:

*Tuesday, 25th June, 1844.*

*Entry from minutes.*

R. Bein & M. Bein, his wife, vs. M. Heath & als. } No. 1133.

This cause was this day resumed before court, when the argument of counsel having concluded, the court took the same under advisement.

And afterwards, to wit, on the 27th June, 1844, the following entry was entered of record:

*Entry from minutes.*

*Thursday, June 27th, 1844.*

R. Bein & M. Bein, his wife, vs. Mary Heath & als. } No. 1133.

It is ordered by the court, that in this case the solicitors of both parties be required to furnish the court with their briefs on or before Monday, the 8th July, 1844, or in default thereof the cause will be decided without them.

Testimony offered in evidence on trial of cause.

*Testimony offered in evidence on the trial of the cause:*

The following was offered in evidence 29th May, 1844:

MARY HEATH,
vs.
MARY BEIN & RICHARD BEIN.

*Petition filed May 6th*, 1843.

To the honorable the judges of the circuit court of the United States, for the fifth judicial circuit, holding sessions at New Orleans, in and for the eastern district of Louisiana.

The petition of Mrs. Mary Heath, widow of Heath, deceased, respectfully represents, that she is an alien, a citizen of Great Britain, and a subject of her majesty Queen Victoria, and that Mary Bein, the wife of Richard Bein, and said R. Bein, are both citizens of the State of Louisiana, residing in the city of New Orleans. Petitioner further represents that she is holder and owner of two promissory notes given by the said Mary Bein, and with the consent and advice of the said Richard Bein, her husband, of the form and tenor following, to wit:

$10,711 71. *New Orleans, 1st May*, 1838.

Five years after date I promise to pay to the order of Richard Bein ten thousand seven hundred and eleven dollars and seventy-one cents, for value received.

(Signed,) M. BEIN.

I hereby authorize my wife to issue this note.

(Signed,) R. BEIN.

$535 59. *New Orleans, 1st May*, 1838.

Sixty months after date, I promise to pay to the order of Richard Bein, five hundred and thirty-five dollars and fifty-nine cents, for value received.

(Signed,) M. BEIN.

I authorize my wife to issue this note.

(Signed,) R. BEIN.

The said notes are both endorsed in blank by the said Bein, the said notes are paraphed on the face of them, in the following words, viz: Ne varietur, secured by mortgage passed before me on the 8th day of May, 1838.

(Signed,) DAVID L. McCOY, *Not. Pub.*

That at maturity said notes were duly presented and payment demanded, which being refused, were thereupon protested for non-payment; all of which facts more fully appear from reference to the said notes and to the protest thereof hereunto annexed.

That the said notes were given for a loan of money to the said Mary Bein for her own use and benefit, with the advice and consent of her

said husband, by Sherman Heath, who is since deceased, but who was at the time of the execution of the said notes, and before and afterwards, up to the time of his decease, an alien and a citizen of the kingdom of Great Britain; that the said loan was to draw interest at the rate of ten per cent. per annum; the smaller note being for one of the semi-annual instalments of interest; to secure the payment of said loan and interest, the said Mary Bein, being duly authorized by her said husband, mortgaged and hypothecated to the said Sherman Heath, and unto his heirs and assigns, all and singular that lot or portion of ground, together with the three story brick dwelling-house and back buildings thereon, and all the appurtenances thereunto belonging, situated in the square or block comprised between Canal, Burgundy, Common, and Rampart, to wit: The continuation of Burgundy, now called Phillippi, now called Circus streets, being the north western half of lot number sixty-eight, as per plan made for the corporation of this city, and deposited in the office [of] Michel de Armas, late notary public in this city, the 16th June, 1819. The said half lot measures twenty-seven feet front on Canal street, by one hundred and twenty feet deep, French measure, and is bounded on the said side next Rampart street by lot number sixty-nine, and on the other side by the other half of said lot No. 68; all of which facts more fully appear from the copy of said act of mortgage hereunto annexed, and made a part of this petition.

The petitioner alleges that after making the said loan the said Sherman Heath died, leaving his last will and testament, by which he transferred to the petitioner all his rights under the said mortgage, and his rights to the notes above mentioned, which said will has been duly probated in the court of probates for the parish of Orleans, in the State of Louisiana; which said will, after being duly probated, was ordered to be recorded by the judge of the said court, which was accordingly done in a legal manner by the proper officer of said court; all of which facts more fully appear from reference to the annexed transcript of said proceedings in the court of probates. Petitioner alleges that said notes are due and unpaid, although the same have been duly demanded; wherefore petitioner prays, that an order of seizure and sale issue against the said Mary Bein, that the said property mortgaged to pay the said loan, and the notes and the interest, be seized and sold to pay the said notes, to wit: for the sum of eleven thousand two hundred and forty-seven $\frac{30}{100}$ dollars, with interest at the rate of ten per cent. on ten thousand seven hundred and eleven $\frac{71}{100}$ dollars, from 1st May, 1843, with eight dollars costs of protest, and costs of suit.

Signed, ELMORE & KING,
*Att'ys for plaintiff.*

(Signed,) JNO. R. GRYMES.

*Judge's order.*

Let an order of seizure and sale issue as herein prayed for.

(Signed,) JNO. H. McCALEB,
*U. S. Judge.*

*New Orleans*, 1*st May*, 1838.

$10,711 71 cts. Five years after date I promise to pay, to the order of Richard Bein, ten thousand seven hundred and eleven dollars and seventy-one cents, for value received.

(Signed,) M. BEIN.
Endorsed, R. BEIN.

I hereby authorize my wife to issue this note.

(Signed,) R. BEIN.

Ne varietur, secured by mortgage passed before me, this 8th day of May, 1838.

(Signed,) DAVID L. McCAY, *Not. Pub.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known, that on this fourth day of May, in the year one thousand eight hundred and forty-three, at the request of Mrs. Mary Heath, holder of the original note, whereof a true copy is on the reverse thereof written, I, David Lawson McCoy, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to William Liddle, the son of Mrs. M. Bein, the drawer, at her domicil in this city, and demanded payment thereof; I was answered that the same could not be paid; whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interests, suffered or to be suffered, for want of payment of the said note. Thus done and protested in the presence of George Lanoux & J. P. Gilly, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written. [SEAL.]

(Signed,) G. LANOUX, J. P. GILLY.

(Signed,) DAVID L. McCAY,
*Notary Public.*

$10,711 71. *New Orleans*, 1*st May*, 1838.

Five years after date I promise to pay, to the order of Richard Bein, ten thousand seven hundred and eleven dollars and seventy-one cents, for value received.

(Signed,) M. BEIN.
Endorsed, R. BEIN.
I hereby authorize my wife to issue this note. R. BEIN.

The undersigned notary do hereby certify, that the party to the note, whereof a true copy is above written, has been duly notified of the pro-

test thereof by letter to him, by me written and addressed, dated on the day of the said protest, and served on him by delivering said letter to the said Richard Bein on the day and date below written. In faith whereof I have hereunto signed my name, together with George Lanoux and James P. Gilly, witnesses, at New Orleans, this fifth day of May, eighteen hundred and forty-three.

(Signed,) DAVID L. McCAY, *Not. Public.*
(Signed,) G. LAURAUX,
J. P. GILLEY.

A true copy. New Orleans, 5th May, 1843.
Signed, DAVID L. McCAY, *N. P.*

$535 59. *New Orleans, 1st May,* 1838.

Sixty months after date I promise to pay, to the order of Richard Bein, five hundred and thirty-five dollars and fifty-nine cents.

(Signed,) M. BEIN.
Endorsed, R. BEIN.

I hereby authorize my wife to issue this note.
(Signed,) R. BEIN.

Ne varietur, secured by mortgage passed before me, on the 8th day of May, 1838.
Signed, D. L. McCAY, *Not. Pub.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known, that on this fourth day of May, in the year one thousand eight hundred and forty-three, at the request of Mrs. Mary Heath, holder of the original note, whereof a true copy is on the reverse hereof written, I, David Lawson McCay, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to William Liddle, the son of Mrs. M. Bein, the drawer, at his domicil in this city, and demanded payment thereof; I was answered that the same could not be paid; whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, costs, charges and interest, suffered or to be suffered for want of payment of the said note. Thus done and protested in the presence of George Laurux and James P. Gilly, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.
[SEAL.]
(Signed,) DAVID L. McCAY, *Not. Pub.*

$535 59. *New Orleans, 1st May,* 1844.

Sixty months after date I promise to pay, to the order of Richard Bein, five hundred and thirty-five dollars and fifty-nine cents, for value received.

(Signed,) M. BEIN.

I hereby authorize my wife to issue this note.
(Signed,) R. BEIN.
Endorsed, R. BEIN.

Ne varietur, secured by mortgage passed before me, on the 8th May, 1838.

Signed, DAVID L. McCAY, *Not. Pub.*

I, the undersigned notary public, do hereby certify, that the party to the note, whereof a true copy is above written has been duly notified of the protest thereof by letters to him written, and addressed, written on the day of the said protest, and served on him by delivering said letter to the said Richard Bein on the day and date below written. In faith whereof I have hereunto signed my name, together with George Lanoux and James P. Gilly, witnesses, at New Orleans, this 5th May, 1843.

Signed, G. LANOUX,
J. P. GILLY,
D. L. McCAY, *N. P.*

A true copy. New Orleans, 5th May, 1843.
(Signed,) DAVID L. McCAY, *N. P.*

8th May, 1838, mortgage by Mrs. M. Bein to Sherman Heath, filed May 6th, 1843.

STATE OF LOUISIANA, *City of New Orleans:*

Be it remembered, that on this eighth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States of America the sixty-second, before me, David Lawson McCay, notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally came and appeared Mistress Mary Milligan, widow of the late William Liddle, and now wife of Richard Bein of this city, and with her also appeared the said Richard Bein, duly authorizing and assisting her in the execution of these presents; and the said Mrs. Bein declared, that whereas she is justly and truly indebted unto Sherman Heath, of this city, in the full sum of ten thousand seven hundred and eleven dollars and seventy-one cents, being for a loan of money made to her, and for her sole use and benefit, by the said Sherman Heath, on the first of this month, for the term of five years, at an interest of ten per cent. per annum, payable semi-annually; for which loan she, the said Mrs. Bein, has delivered to the said Sherman Heath, who hereby acknowledges the receipt thereof, eleven promissory notes, drawn by her, the said Mary Bein, with the authorization of her said husband, to his order, and by him endorsed, all bearing date the first day of May, (1838,) the one for the principal sum of ten thousand seven hundred and eleven dollars and seventy-one cents, payable five years after date, and the remaining ten for the interest, being each for the sum of five hundred and thirty-five dollars and

fifty-nine cents, payable in six, twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, and sixty months after date; all which notes have been duly paraphed, ne varietur, by me, notary public, to identify them with this act. Now, therefore, to secure the full and punctual payment at maturity of the said principal and interest notes, amounting in all to the sum of sixteen thousand and sixty-seven dollars and sixty-one cents, in specie or its equivalent, she, the said Mrs. Mary Bein, authorized and assisted as aforesaid, does by these presents specially mortgage and hypothecate*d* unto the said Sherman Heath, present and accepting, and to his heirs and assigns, all and singular that lot or portion of ground, together with the three story brick dwelling-house and back buildings thereon, and all the appurtenances thereunto belonging, situated in the square or block comprised between Canal, Burgundy, Common, and Rampart streets, being the northwestern half of lot number "sixty-eight" as per plan made for the corporation of the city, and deposited in the office of Michael de Armas, late notary in this city, on the sixteenth of June, 1819; the said half lot measures twenty-seven feet front on Canal street, by one hundred and twenty feet deep, French measure, and is bounded on the side next Rampart street by lot No. sixty-nine, and on the other side by the other half of said lot No. sixty-eight, being the same property purchased by the present mortgagor from James B. Hullin, by act passed before Hugh K. Gordon, late notary, on the 15th of April, 1829. The said Mrs. Bein hereby binding herself not to alienate, deteriorate, nor encumber the above described property to the prejudice of this mortgage; further binding herself to keep the buildings on said lot fully insured during the continuance of this loan, and to transfer the policy over to the said Sherman Heath. By the annexed certificate of the recorder of mortgages of this parish, dated this day, it appears that there is no mortgage standing in the name of the said mortgage, and recorded against the said property. Thus done and passed at the city of New Orleans aforesaid, in the presence of Jules Mossy and Hypolite Hartman, both of this city, competent witnesses, who hereunto sign their names with the said parties, and me, notary.

(Signed,) M. BEIN,
R. BEIN,
JULES MOSSY,
H. HARTMAN,
SHERMAN HEATH,
DAVID L. McCAY, *Not. Pub.*

A true copy. New Orleans, 4th May, 1843.
(Signed,) DAVID L. McCAY, *Not. Pub.*

To the honorable Joachim Burmudez, judge of the court of probates, in and for the city and parish of New Orleans:

The petition of Charles Mason and John Ravencroft McMurdo, both residing in New Orleans, respectfully shews: That at Pensacola, on the 5th of September, 1839, Sherman Heath a resident of New Orleans, departed this life, as more fully appears by the annexed certificate of the

recorder of deaths of New Orleans; that said Heath has left property in this parish, and has left an olographic will and testament, by which petitioners are appointed jointly the executors of said will, his brother Robert Heath being absent, which will is hereto annexed for reference. Petitioners pray that said will and testament be admitted to probate, and ordered to be registered, and to be executed by petitioners as the executors thereof, and for general relief.

(Signed,) J. W. SMITH,
*For petitioners.*

*Order.*

Let the within mentioned will be proved before me this day, at 12 o'clock. New Orleans, 12th September, 1839.

Signed, J. BERMUDEZ, *Judge.*

Ne varietur. New Orleans, 13th September, 1839.

Signed, J. BERMUDEZ, *Judge.*

With the exception of clothing and furniture, all my property is in business, and may be greater or less as fortune *my* prosper our projects; clothing and furniture I leave to my brother Robert, to him I lease the use of all my cash share of business debts due to me, &c., &c.; he must be responsible, and account to my sister Mary for £1000, and my sister Fanny for £1,600, lent by them to me, and repay them when they wish; after they are fairly secured or paid them, I wish £200 to be laid out in remembrances to each of my brothers and sisters, my mother, and Wm. Heath; and also a token of friendship for my American sister Mary B. Johnson, who, if she had been more fortunate in her bringing up, might have been connected by a much stronger *tye*. After this, I wish my property to be dedicated to the benefit of my sisters or brothers who may be most in need; also, my uncles William and Robert—the majority of the family to decide the manner how; but I wish Robert to have the full use of my capital as long as he is in business, being confident that in danger he will secure it. The mortgage for $10,700 from Mary Bein to me, of a house and lot, I transfer to my mother, it in fact being her money, and *and* my name only used, the powers of attorney from her not having been sent me. Robert Heath I wish to be my executor; and so being in full health and enjoyment of my usual senses, so that I sign this my last and only will and testament this 9th day of September, 1838, in New Orleans.

(Signed) SHERMAN HEATH.

Ne varietur. New Orleans, 12th September, 1839.

Signed, J. BERMUDEZ, *Judge.*

Ne varietur. New Orleans, 12th September, 1839.

Signed, J. BERMUDEZ, *Judge.*

NEW ORLEANS, 16*th August*, 1839.

I have nothing to add to the within, save that I owe my sister, Ellen Heath, sixteen hundred Pounds, which I wished paid to her, my brother

Robert being absent, I appoint Charles Mason and McMurdo, (of Addison co.,) my joint executors.

Witness my name, (Signed,) SHERMAN HEATH.

Ne varietur. New Orleans, 12th September, 1839.

(Signed,) J. BERMUDEZ, *Judge.*

Be it remembered, that on this twelfth day of September, in the year of our Lord one thousand eight hundred and thirty-nine, and the sixty-fourth of the independence of the United States of America, upon the application of Charles Mason and John Ravencroft McMurdo, and pursuant to my decree bearing date this day, before me, J. Burmudez, judge of the court of probates in and for the city and parish of New Orleans, personally came and appeared A. H. Wylie and Victor Séré, witnesses, who being duly sworn, were by me presented with an open packet, and bearing no superscription, did declare and say, that the said packet is in the proper handwriting of the late Sherman Heath. Whereupon, the said packet being by me opened, was found to contain an instrument of writing written on three sides of a half sheet of letter paper, beginning with the following words: "With the exception of clothing and furniture," and ending with the following, "and MacMurdo, (of Addison co.,) my joint executors, witness my name, (signed) Sherman Heath," and purporting to be the olographic last will and testament, which being by me exhibited to the aforesaid witnesses, was by them recognised, and declared to be entirely written, dated, and signed by the testator, the said Sherman Heath; which they attest as having often seen him write and sign during his lifetime; and the said appearers did hereunto set their hands after due reading hereof, on the day, month, and year first above written.

(Signed,) A. H. WYLIE.
VICTOR SERE.

Sworn to and subscribed before me, this 12th day of September, 1839.

(Signed,) J. BERMUDEZ, *Judge.*

Whereupon I, the said judge, do hereby declare the said olographic last will and testament to be duly proved, and after having read the said will in a loud and distinct voice to the aforesaid witnesses, and in the presence of Messrs. A. D. Doriocourt and P. A. Churbonnett, all present in court, and after having signed the said will, ne varietur, at the beginning and end of each page, do now order the same to be deposited and recorded in the register of wills office, and that the execution thereof take place according to law.

Done in the court of probates at New Orleans, this 12th day of September, 1839.

Signed, J. BERMUDEZ, *Judge.*

I, Andrew D. Doriocourt, deputy register of wills in and for the parish and city of New Orleans, State of Louisiana, and ex-officio deputy clerk of the court of probates, in and for said parish and city, do hereby certify, that the foregoing record contains a true, full, and complete copy of the

original petition presented by Charles Mason and John Ravencroft McMurdo, and of the order granted thereon; as also of the original olographic last will and testament of Sherman Heath, deceased, on file and recorded in my office and of the probate thereof, also on file in my office; and I further certify, that the honorable the court of probates aforesaid has ordered the execution of said last will and testament according to law, after having duly admitted the same to probate.

In faith whereof, I have hereunto set my hand and seal of said court of probates, at the city of New Orleans, this sixth day of May, in the year of our Lord one thousand eight hundred and forty-three, and the sixty-seventh of the independence of the United States of America.

[SEAL.] (Signed,) AND. D. DORIOCOURT,
*Deputy Register of Wills.*

I, Joachim Bermudez, sole judge of the court of probates, in and for the parish and city of New Orleans, State of Louisiana, do hereby certify, that And. D. Doriocourt, by whom the above record, certificate, and attestation were made and given, and who, in his own proper handwriting, has thereunto subscribed his name and affixed his seal, was at the time of so doing, and now is, deputy register of wills, in and for the parish and city of New Orleans, and ex-officio deputy clerk of the court of probates, in and for the said parish and city, duly commissioned and qualified, and to all whose acts as such, full faith and credit are and ought to be given, as well in courts of judicature as thereout; and that the above record, certificate, and attestation are in due form of law, and made by the proper officer.

In testimony whereof, I have hereunto set my hand and affixed my private seal, at the city of New Orleans, this sixth day of May, A. D. 1843, and the 67th of the independence of the United States of America.

J. BERMUDEZ, *sole Judge.*

And afterwards, to wit, on the 8th day of May, in the year 1843, the following writ of seizure and sale:

U. S. OF AMERICA:

MARY HEATH, vs. MARY BEIN & RICHARD BEIN. } No. 1121.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to seize and sell, after legal demand, for cash, the following described property, to wit, all and singular that lot or portion of ground, together with the three story brick dwelling-house and back buildings thereon, and all the appurtenances thereunto belonging, situated in the square or block comprised between Canal, Burgundy, to wit, the continuation of Burgundy, now called Phillippa, Common, and Rampart, now called Circus street, being the northwestern half of lot number sixty-eight, as per plan made for the corporation

of this city, and deposited in the office of Michael de Armas, late notary public at this city, the 16th June, 1819. The said half lot measures twenty-seven feet front on Canal street, by one hundred and twenty feet deep, French measure, and is bounded on the side next Rampart street by lot number 69, and on the other side by the other half of lot number sixty-eight, to satisfy Mrs. Mary Heath, widow of Heath, deceased, of the sum of eleven thousand two hundred *forty* and forty-seven dollars and thirty cents, with interest, at the rate of ten per cent., on ten thousand seven hundred and eleven dollars and seventy-one cents, from the first of May, 1843, with eight dollars cost of protest and costs of suit. Clerk's fees, $14 75.

And what you do in the premises you make return thereof, together with this writ, to our said court, on the first Monday in June, A. D. eighteen hundred and forty-three.

Witness the honorable Roger B. Taney, chief justice of the Supreme court of the United States, this eighth day of May, eighteen [SEAL.] hundred and forty-three, and of the independence of the United States the sixty-seventh.

For DUNCAN N. HENNEN, *Clerk*.
H. B. PAGE, *Deputy Clerk*.

Marshal's return. Received May 8th, 1843, and on the 13th day of the same month I demanded the amount of the within writ, from the defendants, which they refused to pay, and after complying with all the previous legal requisites, I seized the property described in the body of this writ, and advertised the same for sale, according to law; when, on the 29th day of June, 1843, this writ was stayed, by an injunction, issued from the same that this writ was.

Signed, A. S. ROBERTSON, *Marshal*.
J. P. WALDEN, *D. U. S. Marshal*.

And afterwards, to wit, on the 13th day of May, 1843, the following entry was entered of record: *Saturday, 13th May*, 1844.

MARY HEATH,
vs. } No. 1121.
MARY BEIN & RICHARD BEIN.

On motion of H. B. Eggleston, of counsel for the above defendants, it is ordered by the court, that the said Mary Heath, the above plaintiff, do shew cause at nine o'clock, A. M., on Wednesday next, the 17th May, 1843, why the order of seizure and sale granted in this case, and actually taken out by the said plaintiff, should not be revoked and set aside, on the following grounds:

First. The said seizure and sale illegally and improvidently issued.

Second. No seizure and sale can legally issue on the note and documents filed in this suit.

Third. There is no authentic endorsement of the notes sued upon by the plaintiff to the said plaintiff, nor can she legally proceed, by executory process, to enforce the payment of said notes or mortgage, but must pursue the ordinary way.

Fourth. The said seizure and sale are illegal, and not warranted by the facts of the case.

Marshal's return. Received 13th May, 1843, and on the same day I served a copy of the within order on Elmore and King, esqs., in person at New Orleans.

Signed, GEO. GAVIN, *D. U. S. Marshal.*

And afterwards, to wit, on the 17th May, 1843, the following entry was entered of record:

*Wednesday, May 17th*, 1843.

MARY HEATH, vs. MRS. BEIN & R. BEIN. } No. 1121.

The rule taken by the defendants in this case upon the plaintiff, to shew cause why the writ of seizure and sale in this case should not be set aside, came on for hearing this day, King esquire, appearing for the plaintiff, and Eggleston esquire, for the defendants; whereupon, after some considerable argument, the case was continued, for further consideration, until to-morrow.

And on the 18th of May, 1843, the following entry was entered of record:

*Thursday, May 18th*, 1843.

MARY HEATH, vs. M. BEIN & R. BEIN. } No. 1121.

The rule taken upon the plaintiffs by the defendants in this case, continued from yesterday, was by consent submitted without further argument.

And afterwards, to wit, on the 26th May, 1843, the following entry was entered of record:

*Friday, May 26th*, 1843.

The court having maturely considered the rule, taken in this case by the defendants upon the plaintiffs, to shew cause why an order of seizure and sale herein granted should not be revoked, does now order, adjudge, and decree, that the said rule be discharged.

*Sale of lot, Hullin to Widow Liddle.*

14th April, 1829, sale of lot, James B. Hullin to Widow Liddle.

Be it known, that on this 15th day of April, in the year of our Lord one thousand eight hundred and twenty-nine, and fifty-third of the independence of the United States of America, before me, Hugh K. Gordon, notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and sworn, personally appeared James Boyd Hullin, resident of this city, who declares that he has sold and delivered, and by these presents does sell, assign, transfer, and convey, with full guarantee, unto Mary Milligan, widow of the late William Liddle, deceased, also resident of this city, the said party being present, acknowledging and accepting in the premises, that lot or portion of ground,

part of commons between this city and the suburb St. Mary, situated in the square or block between Canal, Burgundy, Commons, and Rampart streets, being northwestern half of the lot designated by the number sixty-eight, on a plan of lots in that neighborhood made for the corporation of this city, and deposited in the office of Felix (late of Michael de Armas,) one of the notaries of this city, under date of the sixteenth day of June, in the year eighteen hundred and nineteen; the said half lot measures twenty-seven feet front on Canal street, by one hundred and twenty feet deep, French measure, and is bounded on the side next Rampart street by the lot number sixty-nine of said plan, belonging to the succession of the said William Liddle, and on the side next Burgundy street by the other half of said lot number sixty-eight, belonging to John D. Bein, bounded in the rear by the lot late of W. L. Turner, and now of Henry W. Palfrey; together with all and singular the buildings and improvements thereon, and all the rights, commodities, and advantages thereunto belonging; which lot [or] portion of described ground was purchased by the said James B. Hullin from the said William Liddle, deceased, by an act passed before me, the notary, dated this twenty-first day of April, in the year eighteen hundred and twenty-eight. To have and to hold the said described lot of ground and buildings unto the said Widow Liddle, heir heirs and assigns, to her and their only proper use and behoof for ever.

And the said James Boyd Hullin, for himself and his heirs, shall and will warrant, and forever defend, the said described premises, unto the said Widow Liddle, her heirs and assigns, against the lawful claim and claims of all and every person and persons whomsoever by these presents.

By the certificate of the recorder of mortgages in this city, dated this day, now produced and hereunto annexed, it appears that there is another mortgage recorded in the name of James B. Hullin on the above described premises, than the mortgage which he granted by the said act of the twenty-first of April, eighteen hundred and twenty-eight, in favor of the said late William Liddle as vendor, to secure the purchase money thereof for which the said James B. Hullin, as appears by the said recited act, had granted unto the said William Liddle his three promissory notes, dated tenth of said month of April—one at one year after date for the sum of six hundred and sixty-eight dollars; one at two years after date for the sum of six hundred and sixty-six dollars; and one for the like sum of six hundred and sixty-six dollars, at three years after date—the first of which notes the said James B. Hullin hereby declares to have been paid and taken up at maturity, leaving the said mortgage for the payment only of the two last mentioned notes, amounting together to the sum of thirteen hundred and thirty-two dollars.

This sale is made for and in consideration of the sum of seven thousand dollars, payable in one year from the first of March last, the said Widow Liddle having the right and privilege of postponing the payment of one half of said sum *of* one year longer without interest; therefore the said Widow Liddle did make and deliver her the said promissory notes,

each for the sum of three thousand five hundred dollars, dated the first of March last, and payable one year after date to the order of the said James B. Hullin, receipt of which notes is hereby acknowledged, the same being first countersigned and identified with these presents by me, the notary; and the said James B. Hullin hereby promises and obliges himself and his heirs that, in case the said notes shall be transferred and pass out of his hands, he shall provide for and take up at the falling due one of the said notes, and shall take a renewed note for the amount thereof, payable in one year. And to secure the full and punctual payment of the said notes according to the tenor of this act, the said Widow Liddle declared, by these presents, that she does mortgage and hypothecate the above described lot of ground and buildings, with promise not to sell, alienate, or encumber the same to the prejudice of this mortgage.

This sale is made for the further consideration that the said Widow Liddle shall pay and take up, at maturity, as she does by these presents promise and bind herself and her heirs, the said two notes, of six hundred and sixty-six dollars each, of the said James B. Hullin, being the balance unpaid of the said purchase money of said lot as above stipulated. The said Widow Liddle hereby putting herself in the place and stead of the said James B. Hullin for the payment of said notes, and declaring to assume for the payment thereof the mortgage granted by the said James B. Hullin in favor of the said William Liddle, deceased, by above recited act of the twenty-first of April, eighteen hundred and twenty-eight; consenting that the said mortgage be recorded in her name, and have the same effect against her as against the said James B. Hullin.

Thus done and passed, at the city of New Orleans aforesaid, in the presence of Felix Pedesclaux and René Marchand, witnesses, residing in this city, who hereunto subscribed their names with the parties, and me, notary.

The original is signed—Mary Liddle, James B. Hullin, F. Pedesclaux, R. Marshand.

H. K. GORDON, *Not. Pub.*

I do hereby certify the above and foregoing to be a true copy of the original act extant for reference among the records of Hugh K. Gordon, then one of the notaries in this city, and whose records are now in my possession.

In faith whereof I grant these presents, under my signature and the impress of my seal of office, at New Orleans, this twenty-second day of April, one thousand eight hundred and forty-four.

[SEAL.]

(Signed,) THOS. TUREAUD.

*Mortgage—Mrs. Bein to S. Heath.*

8th May, 1838; mortgage—Mrs. Mary Bein to Sherman Heath.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known, that on this eighth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence

of the United States the sixty-second, before me, David Lawson McCoy, notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, and in presence of the subscribing witnesses, personally came and appeared Mistress Mary Milligan, widow of the late William Liddle, and now wife of Richard Bein, of this city, and with her also appeared the said Richard Bein, duly authorizing and assisting her in the execution of these presents; and the said Mrs. Bein declared, that whereas she is justly and truly indebted unto Sherman Heath, of this city, in the full sum of ten thousand seven hundred and eleven dollars and twenty-one cents, being for a loan of money made to her*, (and for her sole use and benefit,) by the said Sherman Heath, on the first of this month, for the term of five years, at an interest of ten per cent. per annum, payable semi-annually; for which loan she, the said *Mrs.* Mistress Bein has delivered to the said Sherman Heath, who hereby acknowledges the receipt thereof, eleven promissory notes, drawn by her, the said Mary Bein, with the authorization of her said husband, to his order, and by him endorsed, all bearing date the first of May instant, (1838,) the one for the principal sum of ten thousand seven hundred and eleven dollars and seventy-one cents, payable in five years after date; and the remaining ten for the interest, being each for the sum of five hundred and thirty-five dollars and fifty-nine cents, payable respectively in six, twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, and sixty months after date; all which notes have been duly paraphed ne varietur, by me, notary, to identify them with act.

*And for her sole use and benefit; (this reference approved.) H. H. M. Bein, J. M. R. Bein, Sherman Heath, David L. McCay, *not. pub.*

Now, therefore, to secure the full and punctual payment, at maturity, of said principal and interest notes, amounting in all to the sum of sixteen thousand and sixty-seven dollars and sixty-one cents, in specie or its equivalent, the said Mrs. Mary Bein, authorized and assisted as aforesaid, does by these presents specially mortgage and hypothecate, unto the said Sherman Heath, present and accepting, and to his heirs and assigns, all and singular that lot or portion of ground, together with the three story brick dwelling-house and back buildings thereon, and all the appurtenances thereunto belonging, situated in the square or block comprised between Canal, Burgundy, Common, and Rampart streets, being the northwestern half of lot number sixty-eight, as per plan made for the corporation of this city, and deposited in the office of Michael de Armas, late notary in this city, on the sixteenth of June, 1819; the said half lot measures twenty-seven feet front on Canal street, by one hundred and twenty feet deep, French measure, and is bounded on the side next Rampart street by lot No. sixty-nine, and on the other side by the other half of said lot number sixty-eight, being the same property purchased by the said present mortgagor from James B. Hullin, by act passed before Hugh K. Gordon, late notary, on the 15th April, 1829; the said Mrs. Bein hereby binding herself not to alienate, deteriorate, nor encumber the above described property to the prejudice of this mortgage; further binding herself to keep the buildings on the said lot fully

insured during the continuance of this loan, and to transfer the policy over to the said Sherman Heath.

By the annexed certificate of the recorder of mortgages for this parish, dated , it appears that there is no mortgage standing in the name of the said mortgagor, and recorded against said property.

Thus done and passed at the city of New Orleans aforesaid, in the presence of Jules Mossy and Hypolite Hartmann, both of this city, competent witnesses, who hereunto sign their names with the said parties, and me, notary.

Signed, M. BEIN,
R. BEIN,
SHERMAN HEATH,
JULES MOSSY,
H. HARTMANN,
DAVID L. McCAY,
*Not. Pub.*

*Office of Mortgages.*

The undersigned, recorder of mortgages for the parish and city of New Orleans, State of Louisiana, certifies, that in the records in his office there is no mortgage standing in the name of Mrs. Mary Milligan, widow of William Liddell, and now wife of Richard Bein, and recorded against a lot of ground, part of the commons of this city and fauxbourg St. Mary, situated in the block comprised between Canal, Burgundy, Common and Rampart Streets, being the northwestern half of the lot designated by the number sixty-eight on a plan drawn for the corporation of this city; said lot measuring 27 feet front on Canal street, by 120 feet deep, French measure, and the buildings thereon.

New Orleans, May eighth, 1838.

[L. S.] Signed, P. LANDREAUX,
*Recorder.*

I certify the foregoing to be a true and exact copy of the original act of mortgage, and of the certificate of the recorder of mortgages
[SEAL.] thereto annexed, extant in my office.
New Orleans, April 16th, 1844.
(Signed,) DAVID L. McCAY, *Not. Pub.*

*Sale of Slave.*

12th June, 1838, sale of property and slave—Richard Bein to Mrs. Mary Bein.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known that this day, before me, William Christie, a notary public in and for the said city and parish of New Orleans, duly commissioned and qualified, personally came and appeared Richard Bein, of this city, who declared that whereas, by an act passed before H. B. Cenas, a notary public in this city, on the second day of April, eighteen hundred and thirty-six, Mrs. Mary Milligan, widow of the late William

Liddle, then and now wife of him, said appearer, sold with his consent to Charles Briggs a certain lot of ground, with the buildings and improvements thereon, situate near the south east corner of Canal and Rampart streets, being lot number sixty-nine, in square number six, measuring twenty-seven feet front on Canal street by one hundred and twenty feet in depth, which sale was made for the sum [of] seventeen thousand dollars and interest, as specified in said act.

And whereas the said appearer has received and used the proceeds of the notes given for said purchase, amounting, together with the interest, to the sum of eighteen thousand seven hundred and eighty-five dollars; and whereas the above described property was brought into marriage by said wife as dotal, as will appear by reference to their marriage contract.

Now, therefore, in order to replace the funds arising from the sale of the said dotal property, he, said appearer, does by these presents sell and convey unto his said wife, present and accepting for herself, her heirs, and assigns, the following described property, to wit: Two certain lots of ground, together with the buildings and improvements thereon, rights, privileges, customs, ways, servitudes, and appurtenances thereunto belonging, or in any wise *appearing*, situate in faubourg Saulet, above this city, in the square bounded by Clio, Nayades, Prytannee and Calliope streets, and designated by the numbers "five" and "six" on a plan drawn by Charles J. Zimple, on the eighth day of April, eighteen hundred and thirty-five, and deposited in my office; said lots measure each twenty-six feet seven inches and five lines front on said Nayades street, by one hundred and twenty feet in depth, between parallel lines, American measure, and bounded in the rear by an alley fourteen feet in width, which is to be kept open for the common use of the owners of the lots bordering thereon; which said lots were purchased by the said Richard Bein from Thomas C. Cash, by an act passed in my office on the twenty-eighth day of March, eighteen hundred and thirty-six, and are free from encumbrances, as appears from the annexed certificate of the recorder of mortgages for this parish, dated this day, with the exception—first, of the mortgage granted by the said Bein in favor of the said vendor, by a clause in his said act of purchase, to secure five thousand five hundred dollars, diminished by the payment of sixteen hundred dollars. Second, of the one granted by act passed before H. B. Cenas, notary, on the 9th December, 1836, in favor of Samuel J. Hobson & Co., for the sum of fifteen thousand dollars. Third, of the one he granted, jointly with his wife, by an act passed in this office on the 23d March, 1837, in favor of the Bank of Louisiana, to secure ten thousand dollars. Fourth, of the privilege in favor of Sidle & Stewart, builders, resulting from an act passed before W. Y. Lewis, notary, on the 22d April, 1837, for seventeen hundred and thirty dollars. And, fifth, of the privilege in favor of the said Sidle & Stewart, resulting from another act before said Lewis, notary, on the 26th August, 1837, for fifteen hundred and sixteen dollars and four cents. All which mortgages the said Bein promises to have cancelled and annulled, with the exception of one in favor of the Bank of Louisiana, which she, the said

Mrs. Bein, hereby assumes. And for the object aforesaid the said Bein also sells to his said wife a negro woman named "Coatney," aged about twenty-eight years, and estimated at the sum of one thousand dollars, which, together with the real estate hereinbefore conveyed, and estimated at the sum of twenty-five thousand dollars, make the sum of twenty-six thousand dollars, out of which the said Mrs. Bein promises and binds herself to pay the said debt of ten thousand dollars to the said Bank of Louisiana, leaving the sum of sixteen thousand dollars, which this sale re-invests to her, the said Mrs. Bein, of her dotal funds alienated by her said husband as aforesaid, and which leaves a balance *of*, still due her on account of said dotal funds, of two thousand eight hundred and seventy-five dollars, which she acknowledges to be correct.

Thus done and passed in my office, at the city of New Orleans, in the presence of W. G. Latham and H. C. Chinn, witnesses of lawful age, and domiciliated in this city, who hereunto subscribe their names, together with the said appearers, and me, the said notary, on this twelfth day of June, in the year of our Lord one thousand eight hundred and thirty-eight.

Original signed,

R. BEIN,
M. BEIN,
W. G. LATHAM,
H. C. CHINN,
WM. CHRYSTY,
*Notary Public.*

I certify the foregoing to be a true copy of the original act of record and [L. S.] on file in my office, New Orleans, 23d December, 1843.

(Signed,) WM. CHRISTY, *N. P.*

UNITED STATES CIRCUIT COURT:

MARY & RICHARD BEIN, vs. MRS. MARY HEATH. } In chancery.

In the cause of the above title, for the mutual convenience of parties, and to facilitate the trial of said cause, it is agreed that the testimony of Henry D. Richardson, taken in the case of Robert Heath vs. Richard and Mary Bein, in the Commercial court, before Judge O. P. Jackson, be used as evidence in this case under the same reservations and restrictions agreed to in the memorandum signed by counsel in that case. It is also agreed that the testimony of J. W. Smith, esquire, taken in the same case, be used in the like manner in this case, under the same reservations and conditions annexed to the said testimony in the memorandum signed by counsel in that case. The signature of Sherman Heath to the letters annexed to the answer of the respondent is admitted to be genuine by the complainants, but all other exceptions to the admissibility and effect of said letters in evidence are reserved. The signature of S. Heath & Co. to the check given for the money loaned, and the endorsement thereon of Mary Bein, is also admitted to be genuine.

It is also admitted that the first four years' interest on the loan was regularly paid, and that for that time the policy of insurance on the house mortgaged to secure the loan was regularly assigned, in conformity with the contract of loan.

(Signed,) R. HEATH,
R. HUNT, *Complt's sol.*
(Signed,) ELMORE & KING,
*Attys. for Respondents.*

No. 32. NEW ORLEANS, 10 *May*, 1838.

*Citizens' Bank of Louisiana.*

Pay to Mrs. Mary Bein, or order, ten thousand seven hundred and eleven dollars and seventy-one cents.

(Signed,) S. HEATH & CO.

$10,711 71.

Endorsed, M. BEIN.

UNITED STATES OF AMERICA,
*State of Louisiana, city of New Orleans:*

By this public instrument be it known that I, William Chrysty, notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned by letters patent under the great seal of the State of Louisiana, and by the law invested with full power and authority to attest all instruments in writing, and to administer oaths qui ad the duties in my office, do hereby certify, that Richard Bein has paid, or caused to be paid, and exhibited to me, notary, duly acquitted, his three promissory notes, drawn to the order of, and endorsed by, John D. Bein, dated 4th March, 1836, and made payable, one for $1,600, on the 14th April, 1837; one for $1,150, in twelve months after date; and one for $1,150, in eighteen months after date; which notes he gave in part payment for two lots of ground in faubourg Saulet above this city, in the square bounded by Clio, Nayades, Prytanie and Calliope streets, and designated by the numbers five and six on a plan drawn by C. F. Zimpel on the 8th of April, 1835, and deposited in my office, measuring each 26 feet 7 inches and 5 lines front on Nayades street, by 120 feet in depth, between parallel lines, all American measure, which lots he purchased from Thomas Caleb Cash, by an act passed in my office on the 28th day of March, 1836, by a clause in which act he mortgaged the said lots to his said vendor to secure the payment of said notes and another.

In faith whereof I grant these presents, under my signature and impress of my seal of office, this third day of November, one thousand eight hundred and thirty-eight.

(Signed,) WM. CHRISTY,
*Not. Pub.*

The undersigned, recorder of mortgages for the city and parish of New Orleans, State of Louisiana, certifies, that what is above written is

the exact copy of the certificate delivered in his office on the ninth day of November, 1838, the radiation of which was accordingly made in the book *thirty-one*, page three hundred and five on the margin of said record of mortgage.

New Orleans, March the eighth, 1843.

[SEAL.] (Signed,) D. PRUM, *Recorder*.

*Testimony taken by consent.*

COMMERCIAL COURT:

ROBERT HEATH,
vs.
MRS. MARY BEIN & RICHARD BEIN.

J. W. Smith, a witness on behalf of said plaintiff, being sworn, deposes: that in March or April, 1838, Sherman Heath consulted witness as to the legality of a loan of about $10,000 to Mrs. Mary Bein, said defendant, on a mortgage upon her property; witness sent to said Sherman Heath the articles of the Louisiana code relative to the abilities and disabilities of a wife in relation to contracts, particularly article 2,412, and also the leading decisions of the Supreme Court upon the subject.

Witness specially informed said Sherman Heath that no arrangement would be legal whatever might be the form of it, if it really was to cover a loan made to the husband; that to be valid the loan must be made to the wife, for *the* sole benefit and use, and that the husband should not be interested or benefitted by the loan. Witness fully warned said Heath against the consequences which might follow from such a loan, and of witnesses aversion to it, and of the necessity of said Heath being perfectly sure as to such loan before making it. Said Heath informed witness that he had the utmost confidence in both Mrs. Bein and her husband, Dr. Bein, in whose family he was in the habit of visiting; that he had been offered by other persons as high as 18 per cent. per annum interest for the money; that as the money belonged to his mother he did not wish to take more than the legal interest for fear of difficulty about the money; and that he thought it safer, and he would rather loan it to Mrs. Bein on her mortgage at ten per cent., than to the other persons who had offered to take it at higher rates, as he had the strongest confidence in the integrity of Dr. and Mrs. Bein, though he could not rely on Dr. Bein, or make any loan to him, as he was greatly embarrassed. He then left the office of witness, and in a few days afterwards returned with Dr. Bein, and stated to witness he had informed Dr. Bein what witness had said, and that he had brought Dr. Bein to the office that witness might make this opinion known to him, Dr. Bein. Dr. Bein heard this, and witness then briefly repeated to Dr. Bein what he had before stated to said Heath, and stated distinctly to Dr. Bein that no loan would be legal unless it was for Mrs. Bein's sole use and benefit; that no loan could be made legally to him under cover to a loan to her, and that it must be a bona fide contract with Mrs. Bein; that as his opinion as a lawyer had been asked by Mr. Heath, it was necessary on

the subject to prevent any difficulties hereafter. Dr. Bein then, in the most positive manner, informed said Heath that the proposed loan was a real bona fide loan to Mrs. Bein, that there was no cover or concealment about it. Said Heath afterwards informed said witness he was fully satisfied on the subject, that he had the utmost confidence in what Dr. Bein had told him, and believed it was the safest investment that could be made of the money. He had the act of loan drawn up by Mr. Mackay, and requested witness to examine it, which he did; and thinking the words in the body of the act did not so fully express the meaning of the parties as they ought, witness requested the notary to add the words which are added, and are found in the margin of the act. Witness then drew the check, or rather filled it up, to the order of Mrs. Mary Bein, and gave it to the notary, with a request to deliver it to Mrs. Bein personally on her signing the act, with the authorization of her husband, and giving the notes accordingly.

It was stated in the act that the money had been loaned on the first of May, 1838, because the agreement had been concluded at that time, and the notes were to be dated and the interest was to run from that time. Witness has given the words of the above conversation as nearly as he can recollect them, nothing having occurred from the execution of said mortgage until the filing of the answer in this cause to refresh the recollection of witness as to the exact words which may have been used. Witness is sure from what passed between him and the said Heath as above stated that said Heath fully believed the contract was strictly true, and stated on the face of it, and he is also sure for the same reason that if said Heath had not entertained said belief he would not have made said loan.

Cross-examined by H. B. Eggleston, esquire, for defendant.

Being asked if witness knows personally that said money was for the use and benefit of Mrs. Bein, answers, that he has no personal knowledge on the subject, further than what he has stated in his examination in chief, as he was merely consulted as counsel in the matter.

(Signed,) J. WEIGHTMAN SMITH.

The foregoing testimony of J. W. Smith, esquire, is taken on behalf of the plaintiff by consent of parties, all objections to the form and manner of taking said testimony being waived by the defendants; but all legal objections to the evidence being reserved by the defendants. The defendants waiving the oath of the witness to the above testimony.

(Signed,) EGGLESTON,
*Attorney for defendants.*
ELMORE & KING,
*for plaintiff.*

COMMERCIAL COURT OF NEW ORLEANS:

The State of Louisiana to O. P. Jackson, esquire, one of the associate judges of the city court of New Orleans, greeting:

R. HEATH,
vs.
MARY BEIN & RICHARD BEIN.

Know ye, that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendants, in a certain suit now pending in our commercial court of New Orleans, in which R. Heath is plaintiff, and Mary Bein and Richard Bein are defendants; therefore we desire you, that at certain times and places, by you to be appointed for that purpose, you cause the said witnesses to come before you; that you then and there examine them apart, upon their respective corporal oaths first taken before you upon the holy evangelists; that you reduce their examinations to writing; and when you shall so have taken them, that you send the same, with this commission, closed up under your seal, to us in our said court at the city of New Orleans without delay.

Witness the honorable Charles Watts, judge of our said court, this 26th day of January, in the year of our Lord one thousand [SEAL.] eight hundred and forty-three, and in the sixty-seventh year of the independence of the United States.

(Signed,) PL. DEVERGES, *Dep. clerk.*

COMMERCIAL COURT OF NEW ORLEANS:

R. HEATH,
vs.
MARY BEIN & R. BEIN.

Henry D. Richardson, a witness for plaintiff, being duly sworn saith: He was a member of the firm of Hobson & Co.; knows of a mortgage on the two lots and one house on Nayades street granted by Richard Bein to Hobson & Co. for $15,000; there is $3,300 due and unpaid on said mortgage; not including interest on that amount, he thinks the sum about $3,300; the debt exists in the form of a note drawn by Richard Bein.

The original mortgage by R. Bein was given to secure payment of said Hobson & Co's notes in favor of said R. Bein; after the maturity of these notes, Richard Bein, being unable to take them up, executed his note in favor of Mrs. Bein, his wife, at the request of deponent; the amount of this last note was about $8,860—000 *dollars*—thinks the notes originally given were for the full amount of the mortgage, viz. $15,000, and of that sum all has been paid but the amount of a note which he now holds of about $3,300 dollars, due on the note of $8,860 above mentioned. Cross-examined, says it was the individual debt of Richard Bein, for which he gave the mortgage of $15,000; deponent

was partner of the house of Hobson & Co.; the object in having Mrs. Mary Bein as endorser of the note of $8,860 was, as deponent thought, she could be made responsible for the payment of the same, knowing that Richard Bein, her husband, was in difficulty at the time; learning afterwards that her name on it was of no consequence, deponent did not have the note protested; thinks that it was in 1837 that the note of $8,860 was given; Richard Bein was greatly embarrassed in 1838; does not believe that R. Bein had any property in that year clear of encumbrances; cannot speak positively, but such is his impression; in 1838 Bein was engaged in the grocery business under the firm of R. & A. B. Bein, and said firm was in trouble; R. Bein owed Hobson & Co. in May, 1838, the amount of the note of $8,860; about the 29th May, 1838, R. Bein paid on said note $4,000 in cash, and $1,500 in a note of Jno. Hall's; at the time the note of $8,860 had been due for some time and unpaid; deponent only knows from Richard Bean himself how he procured this money; Mr. Bein put deponent off from time to time, saying that he intended to raise the money by mortgaging some property to Mrs. Heath; this was about the month of May and before that time; when Bein paid the $4,000, he stated to deponent that he had got from Mr. Heath $10,000, and Hobson & Co. were to have $6,000 of it; but Bein only paid $4,000.

The Mr. Heath that deponent speaks of is the Mr. Heath who is deceased. Rd. Bean told deponent that he was to pay Mr. Heath 10 per cent. interest on the amount loaned, and the loan was to be paid in five years, and the interest annually, as deponent thinks; Bein stated that said loan was on one of his wife's houses in Canal street; before Mr. Bein paid the $4,000 to deponent in May, 1838, deponent knows that Bein was much distressed in his circumstances; does not believe that Bein had at that time any other means of raising money other than by mortgaging his wife's property.

Direct examination resumed. Says all he knows about Rd. Bein's circumstances is from what he derived from Rd. Bein and his, Bein's, brother, and general report; of his own personal knowledge does not know how Rd. Bein raised the money he paid; deponent only knows it from Rd. Beins and his brother.

(Signed,) H. D. RICHARDSON.

It is agreed that the above testimony is taken subject to all legal exceptions, and especially as to the hearsay testimony; all formalities in taking the same are waived.

(Signed,) EGGLESTON,
*Attorney for defendant.*
ELMORE & KING,
*for plaintiff.*

STATE OF LOUISIANA, *city of New Orleans:*

In pursuance of the annexed commission to me directed, I have caused to come before me at my office, 60, Royal street, in New Orleans, on the 2nd day of February, 1843, at 5 o'clock, P. M., H. D.

Richardson, a witness for the plaintiff in a certain cause now pending in the commercial court of New Orleans, in which R. Heath is plaintiff, and Richard Bein and Mary Bein are defendants; and the said witness was duly sworn to tell the truth to the questions put to him in the said cause; and as said deposition was reduced to writing by me in his presence, and subscribed by him in my presence, and is above annexed.

Done in presence of King, esquire, for plaintiff, and Eggleston, esq., for defendants. In witness whereof I have hereunto subscribed my name this 2nd February, 1843.

(Signed,) O. P. JACKSON, *Judge*.

STATE OF LOUISIANA,
*First judicial district court.*

RICHARD BEIN and Archibald Bein, in actual custody,
vs.
THEIR CREDITORS and the creditors of R. & A. B. Bein and L. T. Landry & Co.

Petition filed 2nd April, 1840.

To the honorable the judge of the district court in and for the first judicial district, State of Louisiana:

The petition of Richard Bein & Archibald B. Bein, who reside in New Orleans, until lately trading under the firm and style of R. & A. B. Bein, the first of these petitioners lately trading also under the firm and style of L. T. Landry & Co., all of New Orleans, respectfully shews: that owing to heavy losses in trade experienced by the commercial firms in which petitioners have been engaged as above mentioned, owing to the great depreciation in the value of real estate, the general distress of the times, and the extreme difficulty they experience in collecting debts due them, they find themselves insolvent, unable to meet their pecuniary engagements and to pay their just debts; they shew, further, that they are now in actual custody of the sheriff of the parish and city of New Orleans, by virtue of a ca. sa. issued from this honorable court at the suit of Layet and Amelung vs. R. & A. B. Bein, No. 15,393 of the docket of this honorable court, and are therefore compelled to make application, and do hereby make application, to this honorable court, for the benefit of the laws for the relief of insolvent debtors in actual custody; wherefore they pray that, in consideration of the annexed schedule, containing a true and faithful statement of their affairs, duly sworn to according to law, that this honorable court will order a meeting of their creditors and of the creditors of R. & A. B. Bein & Co. and L. T. Landry & Co., to take place in open court at such time as may seem fit; that the usual notices for publication may issue, that all the formalities required by law be performed; that inasmuch as they have absent creditors, an attorney may be appointed to represent them; and after all due and legal proceedings had, your petitioners may have the benefit of

the laws for the relief of insolvent debtors in actual custody, that they may be discharged from all suits and actions now pending against them, and from all debts heretofore contracted by them, or the firms by which they have been connected; and they pray for all such further order as their circumstances and the exigencies of their case may require, and for general relief; and as in duty bound, &c.

(Signed,) JAMES M. WRAY,
*Atty. for petitioners.*

*Order.*

It is ordered that the creditors of petitioners be notified according to law to be and appear in open court on Saturday, the 2nd day of May next, at ten o'clock, A. M., to shew cause, if any they have, why said petitioners should not have the benefit of the laws made for the relief of insolvent debtors in actual custody. James R. Sterrett, esq., is appointed to represent the absent creditors.

April 2nd, 1840.

(Signed,) A. M. BUCHANAN, *Judge.*

*Schedule of affairs of R. Bein, A. B. Bein and R. & A. B. Bein and L. T. Landry & Co.* Dr.

| NAMES OF DEBTORS. | RESIDENCE. | NATURE OF DEBT. | AMOUNT. | [TOTAL.] | REMARKS. |
|---|---|---|---|---|---|
| B. McAlpin - | Mobile | Note | $526 24 | – | These six notes were given to Mr. Richardson to pay balance due on notes. |
| Do. - | do. | do. | 532 98 | | |
| Do. - | do. | do. | 539 92 | | |
| Do. - | do. | do. | 546 46 | | |
| Do. - | do. | do. | 553 20 | | |
| Do. - | do. | do. | 559 94 | | |
| | | | | 3,258 54 | |
| Ingersoll & Co. accept. - | N. Orleans | No bls. dft. | 374 48 | – | These 2 drafts in suit, and atty's rec'pt in the hands of Mr. Watt. |
| Do. - | do. | do. | 2,134 53 | | |
| | | | | 2,509 01 | |
| John B. Bemiss - | Calahoula | Note | 300 14 | | |
| R. Tankersley - | N. Orleans | do. | 101 11 | | |
| J. McGaha - | Miss. | do. | 219 46 | | |
| W. Cowell - | N. Orleans | do. | 97 05 | | |
| | | | | 707 76 | |
| John Long - | Jackson, Mi. | do. | 256 82 | – | The atty's rec'pt for these 4 claims in the hands of H. Watt. |
| Steward & Mitchell | Miss. | do. | 438 43 | | |
| D. Thompson - | do. | do. | 482 31 | | |
| Ingersoll & Co. accept. - | N. Orleans | Draft | 352 40 | | |
| | | | | 1,529 96 | |
| E. T. Stewart - | Caddo | Note | – | 7,500 00 | Pledged to Aa. bk. |
| N. & J. Coe - | – | do. | 134 50 | – | These 2 notes are in the hands of collectors. |
| Wilkinson, McNeal & Co. acceptance - | – | – | 150 00 | | |
| | | | | 284 50 | |
| K. A. Martin - | Baldwin, Mi. | do. | 654 13 | – | These 2 notes in the hands of Mrs. Bein. |
| O. Osborn & Co. - | Cayuga, " | – | 233 22 | | |
| | | | | 887 35 | |

*Schedule*—Continued.

| NAMES OF CREDITORS. | RESIDENCE. | NATURE OF DEBT. | AMOUNT. | [TOTAL.] | REMARKS. |
|---|---|---|---|---|---|
| W. A. Chaplin - | N. Orleans | 3 Notes | $450 00 | | |
| S. M. Oike - | N. York | 3 do. | 375 00 | | |
| J. E. Wilson - | N. Orleans | 1 do. | 175 00 | | |
| P. Lafonta - | do. | 3 do. | 450 00 | | |
| E. J. Jenkins - | do. | 3 do. | 300 00 | | |
| L. A. Levy - | do. | 3 do. | 1,492 50 | | |
| B. Leesantas - | do. | 3 do. | 750 00 | | |
| A. Spearing - | do. | 3 do. | 1,400 00 | | |
| F. Wilkinson - | do. | 1 do. | 1,250 00 | | |
| L. L. Chaton - | do. | 2 do. | 660 00 | | |
| T. G. Brown - | do. | 2 do. | 450 00 | | |
| P. Cenas - | do. | 2 do. | 400 00 | | |
| S. P. Moore - | do. | - | 300 00 | | |
| | | | | 8,382 50 | Pledged to J. D. Bein & A. Cohen. |
| Amo't of bills receivable on hand | | - | - | 25,059 62 | |
| John Watt - | Natchez | Account | 13 75 | | |
| John Dutton - | Plaquemines | do. | 58 69 | | |
| E. Whitmore - | N. Orleans | do. | 92 28 | | |
| Sam'l Bell - | Opelousas | do. | 82 28 | | |
| John W. Gordon | do. | do. | 484 70 | | |
| Ingersoll & Co. - | N. Orleans | do. | 711 70 | | |
| John Henderson - | Miss. | do. | 21 90 | | |
| John Shrock - | do. | Bal. account | 371 44 | | |
| | | | $1,836 74 | 25,059 62 | |
| Amount bro't forward - | | - | 1,836 74 | 25,059 62 | |
| A. C. Ackerman - | Miss. | Account | 33 98 | | |
| P. A. Leigelos - | N. Orleans | do. | 8 51 | | |
| W. H. Davis - | Miss. | do. | 95 55 | | |
| Jesse Guier - | Concordia | do. | 70 39 | | |
| John Hall - | N. Orleans | do. | 14 32 | | |
| Capt. Kelly - | do. | do. | 17 00 | | |
| E. A. Sherburne - | Plaquemines | do. | 218 16 | | |
| Stewart & Mitchell | Miss. | do. | 1,062 78 | | |
| J. R. Serrett - | N. Orleans | do. | 234 71 | | |
| Mitchell & Stewart | Miss. | do. | 76 68 | | |
| Dr. Stewart - | Caddo | do. | 51 81 | | |
| J. Mayland - | Opelousas | do. | 19 00 | | |
| Mrs. Scott - | Franklin | do. | 10 65 | | |
| O. Osborne & Co. | Cayuga, Mi. | do. | 10 62 | | |
| Rev. M. Warren | Ascension | do. | 13 25 | | |
| He. De Conwal - | N. Orleans | do. | 7 76 | | |
| John Merritt - | do. | do. | 5 25 | | |
| J. J. Day - | do. | do. | 12 00 | | |
| Barram - - | do. | do. | 3 25 | | |
| H. Hobbs - | do. | do. | 15 25 | | |
| Paul Layett - | do. | do. | 50 00 | | |
| —— Gray - | do. | do. | 19 00 | | |
| John Kern - | Madisonville | do. | 135 00 | | |
| —— Jowinie - | - | do. | 22 00 | | |
| J. T. Delup - | N. Orleans | do. | 266 03 | | |
| | | | | 4,303 69 | |
| S. Knox - - | Mobile | do. | 267 83 | | |
| V. A. Dwinllard - | N. Orleans | do. | 22 77 | | |
| M. McDougal - | do. | do. | 58 76 | | |
| O. C. Addison - | Miss. | do. | 323 59 | | |

*Schedule*—Continued.

| NAMES OF CREDITORS. | RESIDENCE. | NATURE OF DEBT. | AMOUNT. | [TOTAL.] | REMARKS. |
|---|---|---|---|---|---|
| T. Connolly - | N. Orleans | Account | $55 11 | | |
| E. Rourke - | do. | do. | 4 31 | | |
| F. H. Davis - | do. | do. | 96 56 | | |
| R. W. Curry - | do. | do. | 40 00 | | |
| C. A Binney - | do. | do. | 7 56 | | |
| —— White - | do. | do. | 158 36 | | |
| J. T. Smith & Co. | do. | do. | 9 12 | | |
| Wm. Elliott - | do. | do. | 103 00 | | |
| —— Fentrip - | do. | do. | 11 75 | | |
| P. Steam & Co. - | Covington | do. | 241 67 | | |
| Steele & Jenkins - | Vicksburg | do. | 158 47 | | |
| Suspense acc't, or amounting in all to - | R. & A. B. Bein | ledger - - | 8,879 76 | 10,436 42 | |
| | | | | 39,799 73 | |

| Description of property of R. Bein. | Amount. | Remarks. |
|---|---|---|
| Amount brought forward - | $39,799 73 | |
| The undivided one-third of Tanny plantation, including 82 slaves or thereabouts, horses, stock, farming utensils, &c. Also, 116 shares Union Bank stock, all of which stands in the name of J. D. Bein for my *my* use and account - - - - - - | 40,000 00 | |
| The undivided one-half of square in Carrollton held in my name on joint account with John D. Bein - | 240 00 | |
| The undivided one-half of 6 lots ground in Madisonville, in the name of John D. Bein - - - - | 300 00 | |
| The undivided ½ of lot in square bounded by St. Andrew, St. Mary and Prytanee street, - - - | 8,333 33 | |
| Two and a half lots of ground Nayades street purchased from H. D. Richardson - - - - | 10,941 66 | |
| The undivided quarter of two lots of ground purchased from G. W. Clarke - - - - - - | 2,000 00 | |
| The undivided half of 13 squares ground in the name of John D. Bein; and the undivided third of 90 squares ground in Shrewsbury held in my name on joint ac't of G. W. Pritchard, John D. Bein and myself, about | 5,000 00 | The undivided ½ of the 90 squares belonging to me is mortgaged to H. D. Richardson. |
| A. B. Bein's household furniture, about . - | 1,000 00 | |

In relation to A. B. Bein's partnership with J. Hall, the subscriber having first put no capital into the business, is entitled to half the profits only, and he believes that up to the present period he has drawn as much from the concern as he is entitled to.

(Signed) A. B. BEIN.

| Names of creditors | Residence—Nature of debt. | Amounts. | | Remarks. |
|---|---|---|---|---|
| Mrs. Mary Bein - | New Orleans—for amo't rec'd from sale of house Canal street | $18,785 00 | | |
| | Am't rec'd from sale lot Union street | 6,950 00 | | |
| | Amo't of money rec'd | 10,711 70 | | |
| | | | $36,446 71 | |
| Cr. | By amount refunded by sale of house on Nayades street | 26,000 00 | | |
| | Less her assumption of bond to Bank of Louisiana | 10,000 00 | | |
| | | 16,000 00 | | |
| | Am't of R. A. Martin's dft | 654 13 | | |
| | " of O. Osborne's note | 233 22 | | |
| | " M. Connoher's a'ct | 118 00 | | |
| | " James Varin's do. | 35 00 | | |
| | | | 17,040 35 | |
| | Balance due Mrs. Bein | 19,406 36 | | |
| John Watt - | Natchez—judgment | 12,370 00 | | |
| Layett & Amelung | N. Orleans—do. | 954 65 | | |
| Orleans Bank - | do. —do. | 727 00 | | |
| Tho. Barrett & Co. | do. —do. | 720 00 | | |
| | | | 14,731 65 | |
| H. D. Richardson | do. —bal. of note | 3,000 00 | – | B. M'Alpine's note given in pay't |
| | do. —assumpt'n & notes for lots on Nayades street | 10,941 66 | | |
| | | | 13,941 61 | |
| Thomas E. Ivers - | do.—mortgage note | 2,600 00 | – | These amounts all bear mortgage on Tanny plantation and slaves. |
| E. Blanc - - | do.—2 notes | 12,062 42 | | |
| Do. - - | do.—notes U. Bank | 1,510 00 | | |
| Do. - - | do.— " G. Bank | 4,453 00 | | |
| Do. - - | do.— " Orls. B'k | 2,500 00 | | |
| Do. - - | do.—interest notes | 2,977 92 | | |
| | | | 26,103 32 | |
| Union Bank - | do.—stock loan | – | 4,683 50 | |
| J. Baldwin - | do.—notes and ass'n for prop'y | – | 37,137 00 | |
| T. C. Cash - | do.—notes for property | – | 8,333 33 | |
| G. W. Clarke & J. S. Pritchard - | do.—judgment and notes for my half of property | – | 2,000 00 | |
| John Sliddell - | do.—judgment | – | 96 00 | |
| C. Byrne - | do.—bal. note on prop'y | – | 75 00 | |
| Sidle & Stewart - | do.—bal. note | – | 700 00 | |
| E. Palmer - | do.—judgment | – | 80 00 | Judg't against A. B. Bein's security. |
| Walton & Co. - | do.—note | – | 132 00 | |
| Com'l Bank - | do.— " | 146 00 | | |
| Do. - | do.— " | 325 00 | | |
| | | | 471 00 | |
| N. Richards - | do.— " | 62 50 | | |
| H. Watt - - | do.— " bal. | 4,500 00 | | |
| | | | 4,562 50 | |

*Statement*—Continued.

| Names of creditors | Residence—Nature of debt. | Amounts. | | Remarks. |
|---|---|---|---|---|
| J. D. Bein & A. Cohen - - | New Orleans—note, bal. | $2,824 18 | | |
| Do. - | do.—bal. about | 2,000 00 | | |
| | | | $4,824 18 | |
| Atcha. Bank - | do.—note | 5,715 00 | – | E. Stewart's note |
| Mechs. do. - | do.— " | 285 00 | | pledged for this. |
| B'k of Louisiana | do.— " | 211 00 | – | One-half due by |
| Ocean Ins. Co. - | do.— " | 630 00 | | J. Purdon & Bro. |
| | | | 7,291 00 | |
| Barlur, Bro. & Co. | do.—note | 500 00 | | |
| Do. - | do.—bal. ac't | 287 88 | | |
| | | | 787 88 | |
| Peter Cenas - | do.—note and ac't | 678 00 | | |
| Whittmore, Blair & Co. - - | do.—balance | 261 25 | | |
| J. R. Sterrett - | do.—ac't | 350 00 | | |
| H. B. Cenas - | do.— " | 300 00 | | |
| H. Wheeler - | N. York—ac't | 99 00 | – | This ac't I re- |
| Wm. Chryste - | N. Orl's— " | 64 00 | | mitted which mis- |
| H. Hagart - | Scotland—bal. about | 1,500 00 | | carried. |
| | | | 3,252 25 | |
| A. Hodge, jr. - | N. Orleans—less on property cor. Maz. & Delor. streets, about | – | 13,000 00 | |
| B. Louisiana - | For am't of my bond bearing mortgage on house in Nayades street, assumed by Mrs. Bean | – | 10,000 00 | |
| | | | $171,508 63 | |

With regard to the affairs L. T. Landry & Co., reference is hereby made to the schedule of L. T. Landry in the parish court, where he has made a surrender to the creditors of said firm. As I put no capital into the business I was only a partner in the profits, being by arrangement entitled to one-half the same for my services, which I received when I withdrew from the business in December last, on account of my private account on the books of said firm.

(Signed) R. BEIN.

Having no endorsement book, we must make a separate schedule of them as soon as we can ascertain their number and amount.

*Affidavit of R. Bein.*

Personally appeared Richard Bein, who being duly sworn says, that this his schedule contains a full statement of his affairs, the names of his creditors, their residence, and the nature and amount of the debts respectively due to them; that it also contains a like statement of his estate and effects, real and personal, and of the estate and effects of R. & A. B. Bein, as to which he may be entitled by inheritance, or in reversion or expectancy, or by any other means whatsoever; and also that it

contains a like statement of the affairs of R. & A. B. Bein, and with regard to the affairs of L. T. Landry & Co., *her* refers to the Bilan of said firm already on file in the honorable the parish court.

(Signed,) B. BEIN.

Sworn to and subscribed before me, this 2nd April, 1840.

(Signed,) O. P. JACKSON, *Judge*.

*Affidavit of A. B. Bein.*

Personally appeared Archibald B. Bein, who being duly sworn says, that this his schedule contains a full statement of his affairs, the names of his creditors, their residence, and the nature and amount of the debts respectively due to them; and also a like statement of the affairs of R. & A. Bein; that it also contains a like statement of all his estate and effects, real and personal, and of the estate and effects of R. & A. B. Bein, or to which he may be entitled by inheritance, or in reversion or expectancy, or by any other means whatsoever.

(Signed,) A. B. BEIN.

Sworn to and subscribed before me, this 2nd April, 1840.

(Signed,) O. P. JACKSON, *Judge*.

*Judgment rendered 2nd May*, 1840.

R. & A. BEIN, vs. THEIR CREDITORS.

This being the day fixed for the meeting of the petitioners' creditors in open court said petitioners appeared, and in presence of the counsel appointed to represent the absent creditors, on producing to the court due proof of the publication of the notice to said creditors of the meeting, and no opposition being made to their discharge, it is ordered and adjudged that said petitioners, Richard Bein and Archibald B. Bein, be discharged from imprisonment on executing an assignment of the property surrendered by them unto John D. Bein in trust for their creditors. Judgment rendered 2nd May, 1840.

Signed 7th May, 1840.

(Signed,) A. M. BUCHANAN, *Judge*.

Countersigned, P. LE BLANC, *Deputy Clerk*.

*Assignment.*

We hereby transfer and set over unto John D. Bein, in trust for our creditors, all our right, title, and interest in and to the property and effects mentioned and described in the within schedule.

(Signed,) R. BEIN,

" A. B. BEIN.

Witness—(Signed,) G. W. LEWIS, *Deputy Clerk*.

STATE OF LOUISIANA,
*First judicial district court:*

I hereby certify the above and foregoing ten pages do contain true copies of petition, order, schedule, affidavits, judgment, and [SEAL.] assignment in the case mentioned in the caption hereof.
Clerk's office, New Orleans, 26th April, 1844.
P. LE BLANC, *Dy. Clerk.*

16th January, 1834. Marriage contract between Dr. Richard Bein and Mrs. Mary Liddle.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known that on this sixteenth day of January, in the year of our Lord one thousand eight hundred and thirty-four, before me, Branch W. Miller, a notary public in and for the city and parish of New Orleans, duly commissioned and sworn, personally came and appeared Doctor Richard Bein, of this city, party hereto of the first part, and with him came and appeared Mrs. Mary Liddle, also of this city, party hereto of the other part, which said appearers declared that they had determined and agreed, and do by these presents mutually agree, to enter into the bonds of matrimony under the following civil terms and conditions, to wit:

First. There shall be a community of acquests and gains between them, the said intended husband and wife, which community shall be governed by the laws of this State in relation thereto.

Second. The intended husband [and] wife shall not be liable for the debts and mortgages the one of the other, created before the celebration of the intended marriage, and if there be any such debts or mortgages, the same shall be paid and discharged by either the intended husband or wife who shall have made or contracted them, and the other party belonging to the intended community shall not be subject thereto.

Third. The said intended wife brings into the intended marriage, and settles upon herself as dotal, the following described property, which she holds in common and undivided portions with her minor children, Anna and William Liddle, to wit:

First. Three houses, situated at the corner of Canal and Circu streets in this city, and which has eighty-four feet front by one hundred and twenty deep, estimated herein at thirty-six thousand dollars, - - - - - - - $36,000 00

Second. Three houses on Custom-house street, having sixty feet front, French measure, and the same in depth, herein estimated at thirty thousand dollars, - 30,000 00

Third. One lot at the corner of Carondelet and streets, having twenty-five front by ninety-five feet deep, more or less, herein estimated at four thousand dollars, - - - - - - - 4,000 00

*Slaves.*

| | |
|---|---|
| First. Hester and her family, consisting of three children, herein estimated at twelve hundred dollars, - | $1,200 00 |
| Chloe, estimated at four hundred and fifty dollars, - | 450 00 |
| Nancy, estimated at five hundred dollars, - - | 500 00 |
| Mary Ann, estimated at five hundred dollars, - - | 500 00 |
| Old Sye, estimated at fifty dollars, - - - | 50 00 |

*Bank stocks.*

| | |
|---|---|
| Seventy-one shares Mechanics and Traders, twenty-five dollars paid in, seventeen hundred and seventy-five dollars, - - - - - - | 1,775 00 |
| Twenty-eight hundred dollars, - - - | 2,800 00 |
| Twelve shares Merchants, thirty dollars paid, three hundred and sixty-dollars, - - - - - | 360 00 |

*Bills receivable.*

| | |
|---|---|
| Eleven thousand dollars, - - - - | 11,000 00 |
| Amounting in all to the sum of eighty-eight thousand six hundred and thirty-five dollars, - - - | $88,635 00 |

The enjoyment, income, and administration of all which property she, the said intended wife, gives to the said intended husband, to be appropriated by him for their mutual support, benefit, and advantage, as well as for that of their children, if any they have. But it is expressly agreed between the said contracting parties, that the value herein before fixed upon the said property shall not transfer the ownership thereof, or any part thereof, to the said intended husband. And the said intended husband brings into the said intended marriage the hereinafter described property, which he holds jointly and in common with Messrs. Peach & Bein of this city, and with John D. Bein, to wit:

First. The undivided moiety of a plantation, established as a sugar estate, situate in the parish of Iberville in this State, on the left bank of the Mississippi, containing about twenty-one arpents in front, by the several depths thereunto belonging, bounded above by land belonging to Baldwin, and the lands to the widow [of] Elie Hebert.

Second. The following described slaves attached to said plantation, and which are owned in undivided portions of the said intended husband, Richard Bein, Peach & Bein, and John D. Bein, of this city:

First. Andy, aged fifty years; Henry, three years; old Frank, sixty years; Little Andy, ten years; Pleasant, seven years; Bob, thirty-five years; Diamond, twenty-five years; Gates, twenty-two years; Stephen, twenty-five years; Frank, eighteen years; Sam, twenty-one years; Jerry, twenty-three years; Edom, sixteen years; Ellick, twelve years; Bob, eight years; Lewis, two years; Isaac, fifty years; Deeph, twenty-five years; Betsey, seventeen years; Charlotte, sixteen years; Minerva, fourteen years; Cynthia, eight years; old Poll, forty years; Flora, forty-five years; Beck, thirty years; Betty, ten years; Dinah, fifteen years;

Penny, eight years; Littleton, twenty-one years; Isaam, twenty years; Cooper, forty-five years; Courtney, twenty-five years; Purnell, two years; Caroline, eight years; Pheny, eighteen years; John, five years; Oliver, a child; Abraham, thirty-two years; Peggy, nineteen years; Caroline, twenty years; Joseph, twelve years; Nancy, ten years; Rachal, seven years; Rose, seven years; Stephen Michell, fourteen years; William, fourteen years; Elvira, twenty years; Edmund Hunt, twenty-five years; Jack Jenooks, twenty-five years; Jacob Gofrey, twenty-five years; Evelina, twenty years; Stephen, twenty-five years; Sam. Liddle, twenty-four years; Elvira, sixteen years; Mary Bein, twenty-five years; Nelson, twenty years; Anthony, seventeen years; Harvey, forty-five years; Jacky, thirty-five years; Stepney, forty years; Milly, thirty years; Tom, eight years; Eustis, eight years, being sixty-five in number, and herein estimated, together with said plantation, at the sum of $50,000.

Amounting in all to the sum of fifty thousand dollars, $50,000. It is expressly understood and agreed upon, by and between the contracting parties, that each party reserves the right of selling and disposing in any manner they may think proper after marriage, and with the mutual consent of each other, all or any part or parts of the above enumerated and described property, and to dispose of the funds arising from such sale or sales in any manner they may think proper, without the intervention of any court or judicial proceedings whatever.

It is thus that the whole has been agreed and determined on between the said contracting parties, who have promised, obliged, and bound themselves in manner and form aforesaid.

Thus done and passed the day and year aforesaid, in the presence of E. L. Hyams and Joseph B. Marks, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, notary.

Original signed,

R. BEIN,
MARY M. LIDDLE,
E. L. HYAMS,
JOS. B. MARKS,
B. W. MILLER,
*Notary Public.*

I certify the foregoing to be a true copy of the original act now in my possession as the successor in office of the late Branch W. Miller. In faith whereof I grant these presents under my signature and the impress of my seal of office, at New Orleans, this twenty-second day of December, 1842.

(Signed,) H. B. CENAS, *Not. Pub.*

Filed June 18th, 1844.

BANK OF LOUISIANA:

Whereas I, A. Sidney Lewis, sheriff of the district of the first district court of the State of Louisiana, by virtue of an order of seizure and sale

to me directed by the honorable the said district court of the State of Louisiana, in the suit of the President, Directors, and Company of the Bank of Louisiana vs. Richard Bein, being No. 22,351 of the docket of said court, after having fulfilled and complied with all the previous legal requisites, did seize two certain lots of ground, together with the buildings and improvements thereon, situated in faubourg Soulet above this city, in the square bounded by Clio, Nayades, Prytanie, and Caliope streets, and designated by the number five and six on a plan drawn by Charles F. Zimpel on the eighth day of April, eighteen hundred and thirty-five, and deposited in the office of William Chrystie; said lots measure each twenty feet seven inches and five lines front on said Nayades street, by one hundred and twenty feet in depth, between parallel lines, American measure, and bounded in the rear by an alley fourteen feet wide, to be kept open for the common use of the owners of the lots bordering thereon; and after having given due and legal notice to the said defendant of the said seizure in the manner pointed out by law, I advertised the said property for sale after the expiration of the legal delay from the time of said notice, to wit, on the third day of April, eighteen hundred and forty-three, by advertisement composed in English and French, announcing the said sale to take place at the City Exchange, on the ninth day of May, eighteen hundred and forty-three; said advertisements were inserted and published in French and English in two papers in the city of New Orleans, to wit, in the New Orleans Bee and in the Morning Herald, from the third day of April, 1843, to the day of sale, being in full thirty days from the day of the first notice given; and after having complied with and performed all the additional previous legal advertisement, did expose the same at public sale according to law, at the City Exchange on Saint Louis street, on the hour of twelve o'clock meridian, on the ninth day of May, eighteen hundred and forty-three, when W. E. Leverich, for account of the President, Directors, and Company of the Bank of Louisiana, being the highest and last bidder, the said before described property was adjudged to the said Bank of Louisiana for the price of seven thousand five hundred dollars, payable cash, which I hereby acknowledge to have received as follows, viz:

| | |
|---|---|
| The said purchaser paid me the charges in cash, say - | $194 25 |
| and retained the balance on account of the claim, say - | 7,305 75 |
| | $7,500 00 |

Now, therefore, know all men by these presents that I, the said sheriff, in consideration of the premises, and by virtue of the laws of the State of Louisiana in such case made and provided, do sell and transfer the said before described property to the said Bank of Louisiana, and all the right and title which the said Richard Bein had in or to the said before described property; to have and to hold the same to the said Bank of Louisiana, her successors, heirs, and assigns forever.

In witness whereof I have hereunto signed my name, at New Orleans,

in the State of Louisiana, this eleventh day of May, in the year one thousand eight hundred and forty-three, and the sixty-seventh year of the independence of the United States.

(Signed,) A. SIDNEY LEWIS, *Sheriff.*

Signed in presence of—

(Signed,) A. MEYNEIR,
S. BLOSSMAN.

I, register of conveyances, certify, that the present deed of sale has been recorded this day in my office, in book 34, folio 155.

New Orleans, May 12th, 1843.

(Signed,) BERNARD MARIGNEY, *Register.*

STATE OF LOUISIANA,
*First judicial district court:*

A true copy from the record in this office, in deed book H, at page 349. Clerk's office, 31st May, 1844.

W. WAGNER, *Deputy Clerk.*

Filed 18th June, 1844.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known that this day before me, William Chrysty, a notary public in and for the said city and parish of New Orleans, duly commissioned and qualified, personally came and appeared John David Bein, of this city, herein acting in his capacity of sole syndic of the creditors of Richard Bein, also of this city, by virtue of his appointment as such at a meeting of said creditors held before the district court of the first judicial district of the State of Louisiana, who declared that in his capacity aforesaid, and by virtue of the authority in him vested by the provisions contained in the 31st section of an act passed by the legislature of this State, entitled "an act relative to the voluntary surrender of property, and to the mode of proceeding as well for the direction as for the disposal of debtors' estates, and for other purposes," approved on the twentieth day of February, eighteen hundred and seventeen, he does by these presents cancel, annul, rescind, and make void all and singular the mortgages, legal, judicial, and conventional, standing in the name of him, the said Richard Bein, and recorded against property and slaves in this parish; which said mortgages, property, and slaves, more particularly mentioned and set forth in a certificate of the recorder of mortgages in and for this city and parish, bearing date the seventh day of July instant, and hereunto in the margin annexed for reference, which certificate is in the words and figures following, to wit:

"OFFICE OF MORTGAGES:"

The undersigned, recorder of mortgages for the city and parish of New Orleans, State of Louisiana, certifies that, according to his records there are no other mortgages standing in the name of Richard Bein, and recorded against the following described property and slaves, viz.

1st. Two and a half lots of ground situate in the square bounded by Nayades, Clio, Apollo, and Calliope streets, and designated by Nos.

three, four, and five, and measuring together 63 feet 9 inches front on said Nayades street, by a depth of 116 feet 10 inches and 5 lines; half lot No. 3 measures 12 feet nine inches front on said Nayades street by a depth of 116 feet 10 inches and 5 lines; lot No. 4 measures 25 feet 6 inches front on Nayades street, by a depth of 116 feet 10 inches and 5 lines. And lot No. 5 measures the same as lot No. 4, with an alley eleven feet wide in the rear, in common to all the lots fronting in Nayades street and extending thereto.

2. And the slaves named Sam, negro, aged 24 years; Allick, negro, aged 16 years; Charlotte, negress, aged 21 years, and little Sam, her child, aged 4 years." Then the following, viz:

B. 36, f. 438. The privilege in favor of Sidel & Stewart, builders, and resulting from an act passed before Wm. T. Lewis, notary, on the 22nd of April, 1837, to secure seventeen hundred and thirty dollars, $1,730, value received in work and materials furnished for the house of said R. Bein in Nayades street, between Clio and Calliope streets.

B. 37, f. 628, 2. The privilege in favor of said Sidle & Stewart, builders, and resulting from an act passed before W. T. Lewis, notary, on the 26th August, 1837, to secure fifteen hundred and sixteen dollars and four cents, $1,516 04, value received in work and materials furnished for the house of said R. Bein on Nayades street, between Clio and Calliope streets."

B. 38, fo. 460. The mortgage granted by said Richard Bein for act passed before Wm. Chrysty, notary, on the 14th February, 1838, in favor of Robert C. Camp, on the slaves Sam and Charlotte, and her child, to secure two thousand six hundred dollars, $2,600.

B. 39, f. 316. 4. The mortgage by him granted per act passed before David L. McCay, notary, on the 21st June, 1838, in favor of Henry D. Richardson, his vendor, on the landed property above described, to secure five thousand three hundred and eight dollars and two-thirds, $5,308 66⅔, and the reversion by him assumed per same act to the amount of five thousand six hundred and thirty-three dollars and one-third, $5,633 33⅓, of the following incumbrances, viz:

B. 32, f. 148. 1o. Of the mortgage granted by said Henry D. Richardson per act passed before David L. McCay, notary, on the 13th May, *May*, 1836, in favor of David Adams, in said lots and others, to secure ten thousand six hundred dollars, on which last amount that of three thousand five hundred and thirty-three dollars and one-third, $3,533 33⅓, has been paid according to the records in this office.

2o. Of the reversions assumed, per same act, by the said Henry Dickinson Richardson to the amount of five thousand four hundred dollars, $5,400, which reversions have been diminished by payment of twelve hundred dollars, $1,200, of the following encumbrances, viz: 1. The mortgages granted by David Adams per five several acts passed before William Christy, notary, on the 13th March, 1835, in

B. 29, f. 38, favor of Thomas C. Cash, in each of lots Nos. 3, 4, and
" 39, 5, above described, and of lots Nos. 1 and 2, to secure
" 39, six hundred dollars, $600, which last mortgages have

B. 39. f. 40, been diminished by payment of one hundred and twenty
" 40, dollars, $120, on each of said lots.

2o. And the reversions assumed by the said Adams per his said five acts of purchase to the amount of nine hundred dollars, $900, on each of said lots, (which reversions have been diminished by payment of three hundred and sixty dollars, $360, on each lot.) Of the mortgage granted by Thomas Caleb Cash, per act passed before Wm. Christy, notary, on the 26th April, 1834, in favor of Simeon Knight, on four lots of ground, Nos. 1, 2, 3, and 4, whereof the five lots above mentioned seem to make part, to secure ten thousand dollars, $10,000, on which amount that of six thousand four hundred dollars, $6,400, has been paid."

B. M 3, f. 328. 5o. The general one in favor of Layet and Amelung versus said Rd. Bein and others, in solido, resulting from a judgment rendered by the first judicial district court on the 5th November, 1838, for nine hundred and fifty-seven dollars and fifteen cents, $957 15, interest and costs.

B. M 3, f. 332. 6o. The general one in favor H. C. Cammack & William McCawley, testamentary executors of Isaac L. McCoy, sueing in the name and for the use of the State of Louisiana, against said Richard Bein and others, in solido, resulting from a judgment rendered by the first judicial district court on the 5th November, 1838, for sixteen hundred and four dollars, $1,604, interest and costs.

B. M 3, f. 333. 7o. The general one in favor of the same against the same, and resulting from a judgment rendered by same court on the 5th November, 1838, for sixteen hundred and four dollars and fifty cents, $1,604 50, interest and costs.

B. M 3, f. 332. 8o. The general one in favor of the same against the same, and resulting from a judgment rendered by same court on the 5th November, 1838, for two thousand three hundred and thirty-seven dollars and eighty-three cents and one-third, $2,337 83⅓, interest and costs.

B. M 3, f. 433. 9o. The general one in favor of the Atchafaya Railroad and Banking Company against said Richard Bein and others, in solido, resulting from a judgment rendered by the commercial court on the 27th May, 1839, for four thousand dollars, $4,000, interest and costs.

B. M 3, f. 434. 10o. The general ones in favor of same company against the same, and resulting from two several judgments rendered by same court on the 27th May, 1839—the first for three thousand one hundred and twenty-four dollars and ninety-eight cents, $3,124 98, interest and costs, and the second for seventeen thousand six hundred dollars, $17,600, interest and costs.

B. M 3, f. 528. 11o. The general one in favor of the City Bank of New Orleans against said Richard Bein and others, in solido, resulting from a judgment rendered by the commercial court of New Orleans on the 27th November, 1839, for sixteen hundred and ninety dollars and twelve cents, $1,690 12, interest and costs.

B. M 3, f. 541. 12o. The general one in favor of the Bank of Orleans against the same, and resulting from a judgment rendered by same court on the 6th December, 1839, for one hundred and fifty-two dollars, $152, interest and costs.

B. M 3, f. 546. 13o. The general one in favor the Bank of Orleans against the same, and resulting from another judgment rendered by same court on the 12th December, 1839, for fifteen hundred and ten dollars and eighty-seven cents, $1,510 87, interest and costs.

B. M 4, f. 7. 14o. The general one in favor of Andrew Hodge against the same, and resulting from a judgment rendered by said commercial court on the 17th December, 1839, for seventy-eight thousand seven hundred and fifty-two dollars and twenty-five cents, $78,752 22, interest and costs.

B. M 4, fo. 61. 15. And the general one in favor of the New Orleans and Carrolton Railroad Company against said R. Bein and others, in solido, resulting from a judgment rendered by the said first judicial district court on the 23rd January, 1840, for sixteen hundred and four dollars, $1,604, interest and costs.

New Orleans the seventh July, 1840.

[SEAL.] P. LANDREAUX, *Recorder.*

All which mortgages the said recorder of mortgages is hereby authorized to erase from his books, agreeably to the provisions of the act hereinbefore recited. Thus done and passed in my office at New Orleans aforesaid, in the presence of W. G. Latham and George Rareshide, witnesses, who hereunto sign their names with the said appearer, and me, notary, on this ninth day of July, eighteen hundred and forty.

Original signed, JOHN D. BEIN,
*Syndic of R. Bein.*
W. G. LATHAM,
GEORGE RARESHIDE,
WM. CHRYSTY, *Not. Pub.*

I certify the foregoing to be a true copy of the original on file and of record in my office.

New Orleans, 13th June, 1844.

[SEAL.] (Signed,) WM. CHRISTY, *Not. Pub.*

Testimony taken in open court and filed June 24th, 1844.

R. BEIN & MARY BEIN, his wife,
vs.
MARY HEATH & AL.

J. D. Bein being sworn says that he and his brother bought the property described in certificate of release of mortgage offered in evidence by the defendant, and filed 30th May, 1844; that he and his brother Richard Bein were mutually endorsers on the notes given for the property; that all the notes were paid as they became due, and that the last note became due in October 1st and 4th, 1837, which was paid.

*Cross-examined.*

That all the reason that he knows that the notes were paid is that he paid half of them himself, and that he has never received notice of protest; that he has examined his cash book, and has seen that the last note was paid at the time it became due, and has charged Dr. Bein with his half.

That there was daily cash transactions with himself and his brother Richard Bein; that himself and brother bought together 6 lots of ground, joint purchase; that Nos. 5 and 6 R. Bein took, and the deponent took No. 3 & 4, and 1 & 2 remained in common; that all the notes given for the said property were paid before November, 1837. That the reason why witness paid the half due by R. Bein on lots Nos. 5 & 6 was that R. Bein paid the half of his, witness', notes due on lots No. 3 & 4; that M. & R. Bein purchased other property in the parish of Jefferson with G. W. Pritchard, each one third the purchase money being $25,000.

G. HEARSEY being sworn says, that he was the book-keeper of Hall and Bein in 1838, and commenced with them in the fall of 1837, and left them in the fall of 1839; that he has examined the notes shewn him, and knows the signatures of J. Hall and A. B. Bein signed to the notes, and also the signature of Richard Bein, endorser on both of the notes; that he knows that the $1,500 note was a renewal of the $1,900 note. That

*Cross-examined.*

That the only reason why he knows that the $1,500 note was a renewal of the $1,900 was, that he saw the entry made in the books of Hall and Bein and regularly carried through the books; that the entries in the bill book were made by Hall & Bein; that he knows that $4,000 was paid on $1,900 note only by reason of the entries in the books of the firm of Hall & Bein; that he knows nothing about the notes of his own personal knowledge, except the signatures are that of Hall & Bein and the endorsement of R. Bein.

E. H. WHEELAR being sworn says, that he kept the books of Hall & Bein from February to June, 1839; that he paid the note of $1,500 to S. T. Hobson & Co.; H. D. Richardson was a member of that firm; that he paid the note the second March, 1839.

H. D. RICHARDSON being sworn says, that the $1,500 note is the same one referred to in his deposition taken before Judge Jackson; that the note was delivered to him by R. Bein or his brother John Bein, and does not recollect which, but it was for Dr. Bein's account it was delivered; it was delivered to him at the same time that $4,000 in cash was paid him, which was on the 28th or 29th of May, 1838; that all the names were on the note *on* the time, as now appear, except that of Elmore & King.

*Two notes, marked* A *and* B.

$1,900. NEW ORLEANS, *26th March*, 1838.

Sixty days after date we promise to pay, the order of Dr. R. Bein, nineteen hundred dollars, for value received.

(Signed,) J. HALL & A. B. BEIN.

Endorsed, R. BEIN,
By J. D. BEIN.
R. & A. B. BEIN.

In liquidation, (B.) S. HEATH & CO.

$1,500. NEW ORLEANS, *28th May*, 1838.

Sixty days after we promise to pay to the order of Dr. Richard Bein fifteen hundred dollars, for value received.

(Signed,) J. HALL & A. B. BEIN.

Endorsed, R. BEIN,
(A.) ELMORE & KING.

On the 25th April, 1844, the following commission issued:

Circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, to Duncan N. Hennen, United States commissioner:

Know ye, that reposing special trust and confidence in your integrity and ability we hereby authorize and require you that you call and cause to come before you John D. Bein and Archibald B. Bein, witnesses, and them duly examine on oath touching and concerning certain matters and things in a case now depending in the said court, wherein Richard Bein and Mary Bein, his wife, are complainants, and Mary Heath and als. are defendants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court, without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this [SEAL.] twenty-fifth day of April, anno domini 1844, and sixty-eighth year of the independence of the United States of America.

For DUNCAN N. HENNEN, *Clerk*,
(Signed,) J. Q. A. HOIT, *Deputy Clerk.*

RICHARD BEIN & MARY BEIN, his wife, vs. MARY HEATH. } In chancery.

Interrogatories to be propounded to Jno. D. Bein, a witness on the part of the complainants:

1st. Are you acquainted with the complainants in this suit, and how long have you known them?

2nd. Do you know whether there was a commercial partnership doing business in New Orleans under the firm of R. & A. B. Bein? If

you answer in the affirmative, state when, and how long it existed, and who composed it.

3d. Do you know whether the firm failed or not? If you answer affirmatively, state when it did fail.

4th. Was or was not that firm totally insolvent in May, 1838?

5th. Do you know what was the situation of Richard Bein, the husband of Mary Bein—the complainants in this suit—with respect to pecuniary means, in May, 1838? If you answer in the affirmative, state whether he had or had not at that time any property or means of his own by which he could raise money, or whether the firm to which he belonged had any means of raising money.

6th. Were you or were you not, at that time, a member of a commercial firm transacting business in New Orleans? What was the name of your firm? Were you or were you not, or was your firm, or was it not, endorser on notes issued by R. & A. B. Bein, when they failed? If you answer affirmatively, state the amount of such endorsement.

7th. Did or did not Richard Bein, one of the complainants, pay some of those notes after his failure in 1838? If you answer in the affirmative, state as exactly as possible the time at which he made those payments, and their amount.

8th. Did or did not Richard Bein, one of the complainants, borrow a considerable sum of money in May, 1838, or thereabout? If you answer in the affirmative, state particularly the time when he obtained it, the person from whom he borrowed it, the sum so borrowed, and the terms and security on which it was loaned.

9th. Do you know what the said Richard Bein did with the money so borrowed? If you do know, state particularly how he used and applied it, or how he used and applied any part of it.

10th. Was or was not any portion of the money, borrowed in May as aforesaid, used and applied to the benefit of Mary Bein, wife of said Richard Bein?

11th. Was or was not Mary Bein, the said wife of said Richard Bein, at that time in debt? Had she or had she not any reason for raising money at that time for individual use and benefit?

12th. Do you know any thing further in relation to the matter in controversy between the parties to this suit which can be of service to the complainants? If you do, state the same as fully and exactly as if you were thereunto particularly interrogated.

(Signed,) H. B. EGGLESTON & R. HUNT,
*Complainants' solicitors.*

UNITED STATES CIRCUIT COURT:

RICHARD & MARY BEIN, vs. MARY HEATH. } In chancery.

Cross-interrogatories to be propounded to John D. Bein.

Cross-interrogatory 1st. Are you interested in the event of this suit?

Are you related to either of the parties? If yea, to whom, and in what manner?

Cross-interrogatory 2d. If you answer the second, third, fourth or fifth interrogatory in chief affirmatively, state particularly from what source your information was derived.

Cross-interrogatory 3d. If in your answer to the sixth interrogatory in chief you state that either you or your firm were endorser for R. & A. B. Bein, describe particularly the notes on which you were endorsers, to whom, and so far as you know for what they were given.

Cross-interrogatory 4th. If Richard Bein paid any of those notes after May, 1838, please describe particularly the notes, to whom given, their amounts, and so far as you know for what given. Also, to whom they were paid.

Cross-interrogatory 5th. If in your answer to the eighth interrogatory in chief you say any thing about Richard Bein having borrowed money in May, 1838, you will please state whether or not you saw the person give the money to said R. Bein. If yea, who was present, when and where was the money given; what kind of money was given? Was it gold, or silver, or paper money, or what was it? If you say you were not present when the money was given or lent, how do you know from whom the money was obtained? From whom do you derive your information, when was it, who was present, what were the words used, and did those present hear those words?

Cross-interrogatory 6th. How do you know that Richard Bein borrowed any money in May, 1838? How do you know that he had no money except what he borrowed?

Cross-interrogatory 7th. How do you know the amount you say Richard Bein borrowed at that time, or upon what terms he borrowed it, or the security given by him?

Cross-interrogatory 8th. Have you never known Richard Bein to represent that this money was borrowed from some one else than the person you have named? If yea, from whom did he represent that it was borrowed?

Cross-interrogatory 9th. If in your answer to the ninth interrogatory in chief you state that you know how Richard Bein applied or used any part of the money borrowed, please state particularly how you know this fact, and the particular uses or debts to which it was applied, the persons to whom the debts were due, and so far as you know for what they were contracted.

Cross-interrogatory 10th. From whom or how did you derive any knowledge of the business or affairs of Mrs. Bein? How do you know whether she was in debt or not, or whether she had any use for money? Did you ever in your life see any body who had no use for money? Had or had not Mrs. Bein a family of children? If yea, how many had she, what their names and ages in May, 1838?

Cross-interrogatory 11th. Are you a married man? Has or has not your wife within the last year or two been discharged from the payment of a large sum of money, to wit, several thousand dollars, by a judg-

ment of court, upon the ground that the debts were contracted for your security and benefit, and that she was not liable for the same? Was Richard Bein a witness for your wife in that suit?

(Signed,) ELMORE & KING,
*Attorneys for respondent.*

And also personally appeared on this 7th day of May, 1844, by virtue of the annexed commission, John Darcy Bein, a witness to be sworn and examined upon the interrogatories and cross-interrogatories annexed in the suit of Richard Bein and Mary Bein, his wife, vs. Mary Heath, who, having been duly sworn, did depose and say, as follows:

1st. To the first interrogatory he answers, that he is acquainted with the complainants in this suit. Richard Bein is his elder brother, with whom he has been acquainted since his recollection. The complainant Mary Bein is the sister of deponent's wife, and he has been acquainted with the said Mary Bein upwards of twenty-two years.

2d. To the second interrogatory he answers, that there existed a commercial partnership, doing business in New Orleans, under the style and firm of R. & A. B. Bein; deponent's memory was not particularly charged as to the time when it commenced, or when it was dissolved, but his belief is that it went into operation in 1834, probably late in that year, and was dissolved late in 1836, or early in 1837. The said firm was composed of Richard Bein, the complainant, and of Archibald B. Bein, the brother of this deponent.

3rd. To the third interrogatory he answers, that the said firm of R. & A. B. Bein did fail and were under protest, at what particular time he does not recollect, but thinks it was late in the year 1838, because late in 1836 or early in 1837 said firm had sold out to J. Hall & A. B. Bein, the paper of which latter house the former firm made use of, and kept themselves afloat for some time. This transfer to Hall & Bein took place late in 1836, or early in 1837, and therefore deponent fixes their failure at some late period in 1838. Said R. & A. Bein went into court in or about 1840, in one of the State courts, and deponent was appointed and became their syndic.

4th. To the fourth interrogatory he answers, that there can be no doubt but that the said firm of R. & A. B. Bein was totally insolvent in May, 1838.

5th. To the fifth interrogatory he answers, that he was acquainted with the pecuniary situation and means of the said Richard Bein in May, 1838, and he is satisfied that neither the said Richard nor the firm of R. & A. B. Bein had any money or property, or means of raising money at that time, other than raising money by mortgage of Mary Bein's property.

6th. To the sixth interrogatory he answers, that he was at that time a member of the commercial firm of J. D. Bein & A. Cohen, a commercial firm doing business in New Orleans; said firm was endorser on the individual notes of the said Richard Bein, and on the notes of R. & A. B. Bein, at the time of their failure. The amount of the endorsements of deponent's firm for R. & A. B. Bein was something upwards

of ten thousand dollars; individually deponent was endorser for Richard Bein alone to an amount exceeding sixty thousand dollars.

7th. To the seventh interrogatory he answers as follows, that Richard Bein, the complainant, did pay, after his failure in 1838, curtailments on some of the notes aforesaid, endorsed by deponent and his said firm, and it is his impression that he paid one of the notes in full; the time at which these curtailments or payments were made was in May, 1838; these payments amount to about the sum of one thousand dollars for curtailments; the note which was paid in full, the amount of which he does not recollect, not included.

8th. To the eighth he answers, that Richard Bein aforesaid negotiated for and effected a loan for Mary Bein, his wife, but for his use, and the use of R. & A. B. Bein, in May, 1838; the money was borrowed from Sherman Heath, and was for somewhat over ten thousand dollars. The loan was payable in five years, with ten per cent. interest, secured by a mortgage upon certain property belonging to Mary Bein, wife of said Richard, and situated in Canal street.

9th. To the ninth interrogatory he answers, that he knows what the said Richard did with a part of the said money; almost the sum of five thousand dollars went to pay a debt due to S. T. Hobson & Co. The said Richard Bein also paid curtails on several notes in divers banks on which deponent's firm, J. D. Bein & A. Cohen, and himself individually, were endorsers. A small portion was applied by said Richard to the payment of a debt due by R. and A. B. Bein to said Sherman Heath, amounting to two hundred and eleven $\frac{10}{100}$ dollars, which amount was deducted at the time of the loan from the amount loaned, as deponent knows from the entries in the books of R. & A. B. Bein, which are now in deponent's possession as syndic of R. & A. B. Bein.

10th. To the tenth interrogatory he answers, that no part of the said money was appropriated to the use of the said Mary Bein, complainant, wife of the said Richard.

11th. To the eleventh he answers, that at the time aforesaid said Mary Bein was not in debt, and had no reason for raising money for her use or benefit.

12th. To the twelfth he answers, that he knows nothing further that could be of use to the complainants in this suit.

To the 1st cross-interrogatory he answers, that he has no interest in this suit; he is related to Richard Bein; said Richard Bein is his brother; Mary Bein is the sister of his wife, said Richard and deponent having married sisters.

2nd cross. To the second cross interrogatory he answers, as to the existence of the firm of R. & A. B. Bein, the time the firm went into operation, his means of knowledge are the books of the said firm, in his possession as syndic of said firm; his knowledge of the failure of said firm, the time when the failure took place, is derived from his personal knowledge of that fact, deponent and his late firm of J. D. Bein & A. Cohen being endorsers on the protested papers of said firm of R. & A.

B. Bein; he knows that they were totally insolvent in May, 1838, from having seen their books; the assets which their books shewed were of that class that could not be collected under any circumstances, and that being the case, their liabilities could not be covered; not one dollar of these assets, or the entire assets of the estate, has been collected to this day; the source of his knowledge of the pecuniary means of Richard Bein is derived from the confidential relations which subsisted between them in 1838, and before them, they being mutual endorsers, and having joint speculations with each other, and on the most intimate terms of daily intercourse; deponent was for the same reason equally well acquainted with the affairs of R. & A. B. Bein; deponent's impression is, that the said firm of R. & A. B. Bein was then (in May, 1838,) in a state of liquidation.

3rd. To the third cross interrogatory he answers as follows: A note, dated March 9th, 1838, at 60 days, drawn by R. Bein in favor of deponent and by him endorsed, and also endorsed by Bein & Cohen and Evariste Blanc, for $3,000; also a note, dated in March, 1836, drawn and endorsed by the same parties for $4,017 $\frac{36}{100}$, at two years from date; another note *note* of similar amount and date, drawn and endorsed by the same parties at three years; another note, dated March 1st, 1836, drawn by R. Bein in favor of J. D. Bein, and by him and E. Blanc endorsed, for the sum of $6,031 $\frac{21}{100}$ at two years, which note was protested; all which said notes were given to Evariste Blanc in part payment of the $\frac{1}{3}$ of the Fanny plantation, purchased by said R. Bein; deponent was endorser in May, 1838, for said R. Bein for an amount exceeding sixty thousand dollars, which endorsements were for speculations of said Richard in real estate; about $30,000 was for a purchase made from Andrew Hodge, jr., for a square of ground between Foucher, Magazine, and Delord, and continuation of Poyfarre streets. Also, for property purchased from Cash & Baldwin, about $8,333 33, in the square bounded by St. Mary, Ursula, and Saint Andrew, and Prytannea streets. The firm of J. D. Bein & A. Cohen were endorsers on the following notes:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Note of R. & A. B. Bein, dates 27th March, '38, a 60 days, | | | | | | 2,526 | 95 |
| Do. | 3rd April, '38, a 60 days, | - | - | - | - | 1,313 | 00 |
| Do. | 11th | do. | do. | - | - | 500 | 00 |
| Do. | 13th | do. | do. | - | - | 5,776 | 61 |
| Do. | 26th | do. | do. | - | - | 425 | 00 |

The above notes were accommodation notes, and deponent does not know to whom or for what they were given; deponent also accepted individually the drafts of John Watt, of Natchez, for upwards of $12,000 for the accommodation of R. & A. B. Bein some time in 1837, which draft remained unpaid in 1838, and is still unpaid.

4th. To the fourth interrogatory he answers, that he has fully answered this interrogatory in his answers to the foregoing interrogatories and cross interrogatories, and can make no other or further answer.

5th. To the fifth he answers, that he did not see the person referred to give any money to R. Bein; deponent was not present when the loan

was made or completed, and cannot say who was present, nor when or where the loan took place, other than that it took place in May, 1838; does not know what kind of money was given; all his knowledge of the fact of the loan is derived from having seen the copy of the act of loan before the notary, and from having seen the books of the firm in which the said loan is entered to the credit of the complainant Mary Bein.

6th. To the sixth he answers, does not know that said Richard borrowed any money, except that he borrowed for Mary Bein as above stated; knows that he had no other money than that above stated as borrowed, because he owed deponent borrowed money which he could not pay.

7th. To the seventh he answers, from the notarial copy above referred to, and from the books of R. & A. B. Bein.

8th. To the eighth he answers, that he never knew said Richard to represent said money, or any money as borrowed at that time, May, 1838, from any one else than from Sherman Heath.

9th. To the ninth he answers, that his knowledge is derived from the books of R. & A. B. Bein, and because notes with deponent's endorsements were curtailed by partial payments.

10th. To the tenth he answers, that he derives his knowledge from having been the agent of said Mary Bein up to 1833, when she married said Richard; deponent thinks he has never seen any body in his lifetime but had some use for money, but he has also seen many who were not in want of it, which was the situation of said Mary in 1838; said Mary had two children when married in 1833, a boy and a girl, Anna Liddle, now Mrs. Hawkins, in 1838 aged 17 years; William Liddle, aged in 1838 fifteen years.

11th. To the 11th he answers, that he is a married man; deponent's wife has not been discharged from the payment of any sum of money by a judgment of any court, upon the ground that the debts were contracted for his, deponent's, use and benefit; and this deponent, nor any one else to his knowledge and belief, has ever made use of Richard Bein to prove such fact, or as a witness in such named suit.

(Signed,) JOHN D. BEIN.

The above testimony taken before me on the day aforesaid.

Signed, DUNCAN N. HENNEN,
*Commissioner.*

RICHARD BEIN & MARY BEIN, his wife,
vs.
MARY HEATH.
} In chancery.

Interrogatories to be propounded to Archibald Bein, a witness on the part of the complainants.

1. Are you acquainted with the complainants in this suit, and how long have you known them?

2. Do you know whether there was a commercial partnership doing business in New Orleans under the firm of R. & A. B. Bein? If you

answer in the affirmative, state when and how long it existed, and who composed it.

3. Do you know whether the firm failed or not? If you answer affirmatively, state when it did fail.

4. Was or was not that firm totally insolvent in May, 1838?

5th. Do you know what was the situation of Richard Bein, the husband of Mary Bein the complainant in this suit, with respect to pecuniary means, in May, 1838? If you answer in the affirmative, state whether he had or had not at that time any property or means of his own by which he could raise money; or whether the firm to which he belonged had any means of raising money.

6th. Did or did not Richard Bein, one of the complainants, borrow a considerable sum of money in May, 1838, or thereabouts, after the failure of the firm to which he belonged? If you answer in the affirmative, state whether particularly the time when he obtained it, the person from whom he borrowed it, the sum so borrowed, and the terms and security on which it was borrowed. (Cont'd in page 109.)

UNITED STATES CIRCUIT COURT:

MARY and RICHARD BEIN } vs. Mrs. MARY BEIN. } In chancery.

*Cross-interrogatories to Archibald Bein.*

1. Are you related to any of the parties to the above suit? If you [are,] please state to whom and in what manner.

2. If you answer the second, third, fourth or fifth interrogatory in chief affirmatively, you will please state in every instance the means of your knowledge and from what source derived. Was or was not the partnership of R. & A. B. Bein in liquidation at that time? Were you or were you not a member of another firm in May, 1838? What firm was it? Was your new firm in good credit at that time?

3rd. If in your answer to the sixth interrogatory in chief you state that Richard Bein borrowed any money in May, 1838, you will please state how and from whom you learned the fact, the time and place, whether any persons were present, if any, who they were, the words used at the time, whether you saw the money paid, who gave the money to Richard Bein, and what kind of money, specie, paper, or what.

4th. If you state in your answer to the sixth interrogatory in chief the person who lent the money to Richard Bein, please state whether you saw the person give the money to him. If so, when and where was it? If you did not see the money given to R. Bein, how do you know the person from whom he obtained it? From whom did you derive your information? What were the words used by your informant; when, where, and who was present at that time? Have you always represented that the money was borrowed by R. Bein from the person you have named?

5th. If in your answer to the sixth interrogatory in chief you state any thing about the amount, or the terms, or the security given, please

state what were your means of information, and from whom you derived the knowledge of these things.

6th. If in your answer to the seventh interrogatory in chief you state you know how Richard Bien applied any portion of the money you say he borrowed, please state how you know this, to whom he paid it, the amount, and so far as you know for what the debt was contracted. If you state any thing about any portion of the money being paid to Sherman Heath, state particularly the amount so paid, and how you know it was paid to Sherman Heath.

7th. From whom did you obtain your information respecting the affairs of Mrs. Bein? How do you know whether the money was applied to her benefit or not? From whom did you get this information? How many children had Mrs. Bein—what their names and ages in May, 1838? How do you know she had no use for money? Did you ever in your life see any person who had no use for money? If you please, state when, who, and what they were.

8th. If in your answer to the last interrogatory in chief you state any thing, you will please state particularly how you know the fact, whether from your own personal knowledge, or from information derived from others.

Signed, ELMORE & KING, *Att'ys for resp'dts.*

Interrogatories in chief continued from page 108, having been omitted—

Continued from page 108.

7th. Do you know what the said Richard Bein did with the money so borrowed? If you do know, state how he used and applied it, or how he used and applied any part thereof; and particularly whether or not he applied any portion of the same to the payment of debts due by the firm of which he was a member, to one Sherman Heath, and all the circumstances relative thereto.

8th. Was or was not any portion of the money so borrowed as aforesaid in May, used and applied to the benefit of Mary Bein, wife of said Richard Bein?

9th. What was the pecuniary condition of Mary Bein, wife of the said Richard Bein at that time? Was she in debt? had she or not any reason for raising money at that time for her individual use and benefit?

10th. Do you know any thing further in relation to the matter in controversy between the parties to this suit, which can be of service to the complainants? If you do, state the same as fully and exactly as if you were thereunto particularly interrogated.

(Signed) H. B. EGGLESTON & R. HUNT,
*Complainants' solicitors.*

By virtue of the annexed commission issued from the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit of Richard Bein and Mary Bein his wife vs. Mary Heath, I have caused to come before me this 25th April, 1844, Archibald B. Bein, a witness to be examined on the interrogatories of the complain-

ants and the cross-interrogatories of the defendants; and the said Archibald B. Bein having been sworn upon the Holy Evangelists of Almighty God, to make true answers to the said interrogatories and cross-interrogatories, and in all respects to answer the truth and the whole truth as to all the matters and things enquired of in the said interrogatories and cross-interrogatories, I thereupon proceeded to read to the said Archibald B. Bein the first interrogatory propounded to the complainant, to which he answers as follows:

1st. To the first interrogatory he answers, that Richard Bein, one of the complainants, is his brother; said Richard being some years older than deponent, he has known for a time as far back as he has any recollection; with the other complainant, Mary Bein, said Richard's wife, he has been acquainted since his arrival in this country, which took place in 1824.

2nd. To the second interrogatory he answers, that there was a commercial partnership doing business in New Orleans under the style and firm of R. & A. B. Bein, said firm was composed of Richard Bein, the complainant, and this deponent; the partnership was formed in 1834, the precise time he does not recollect, but the books of the firm will shew, and was dissolved in November, 1836, when this deponent retired from the firm, and left the liquidation of its affairs to Richard Bein aforesaid; when deponent left it he went into partnership with John Hall, under the firm of John Hall & A. B. Bein.

3rd. To the third he answers, he knows that the said firm of R. & A. B. Bein failed to meet their obligations by payment thereof in 1837 the precise time of the year he does not recollect, but thinks it was about the latter part of said year.

To the fourth interrogatory he answers as follows:

4th. The said firm of R. & A. B. Bein was totally insolvent in May, 1838.

5th. To the fifth interrogatory he answers as follows, with respect to the pecuniary means of Richard Bein, complainant, in 1838, deponent saith, that he has no knowledge of his, said Richard, having any pecuniary means then, with the exception of the loan obtained by said Richard from Sherman Heath & Co.; further deponent does not know that the said Richard had any property or means of his own by which he could raise money; he knows that the said firm of R. & A. B. Bein had no means at that time (in 1838) of raising any money.

6th. To the sixth interrogatory he answers, that Richard Bein, one of the complainants, borrowed a considerable sum of money in May, 1838, or thereabouts, after the failure of the said firm of R. & A. B. Bein; deponent does not recollect the precise day or date of said loan; the money aforesaid was borrowed from Sherman Heath & Co.; the amount of the loan was about ten thousand seven hundred dollars; deponent does not know the terms of the loan, but knows that the payment of said loan or money was secured by a mortgage given by the wife of said Richard Bein on her property in Canal street.

7th. To the seventh interrogatory he answers, that the loan or money

referred to in his answer as above stated was placed in the firm of R. & A. B. Bein as cash received from Sherman Heath & Co., so entered upon the books thereof. About the time of the loan aforesaid, or rather soon afterwards, a large debt, due by Richard Bein individually to S. T. Hobson & Co., and a debt of about two hundred and eleven dollars and some cents, due to S. Heath & Co., were liquidated and paid by said Richard Bein; deponent does not recollect the amount due by said Richard and paid to Hobson & Co.; deponent knows that there were other debts or notes in bank, partly debts of Richard Bein, and part of the said firm, which were paid shortly after the said loan; what notes or debts they were, and the respective amounts, he is unable to say.

8th. To the eighth interrogatory he answers, that he knows of no portion of said money obtained by said loan of May, 1838, having been applied to the benefit of Mary Bein, wife of said Richard Bein.

9th. To the ninth interrogatory he answers, that he knew nothing of the pecuniary condition of said Mary Bein in May, 1838; he did not know of any debts or liabilities existing on her part, or that she had any reason for raising money at that time for her individual use and benefit.

10th. Deponent answers to this interrogatory that he knows nothing further in relation to the matters in controversy between the parties to this suit which can be of service to the complainants.

To the 1st cross-interrogatory he answers as follows:

1st. Deponent is related to the complainant, Richard Bein, said Richard and deponent being brothers.

2nd. To the second he answers, that the means and source of his knowledge of the facts detailed in his answers to the second, third, fourth, and fifth interrogatories are as follows:

He knew of the existence of the firm of R. & A. B. Bein from a personal knowledge, having been a member of the said firm, and cognizant of the time when said firm went into operation and when it dissolved.

He knows that said firm failed in 1837, from having seen notices of protest of notes on which said firm was endorser, and from the fact that said firm owed the firm of J. Hall & A. B. Bein a debt which laid over from their inability to pay, and which was entirely and eventually paid by deponent out of his share of the concern of J. Hall & A. B. Bein; and also from frequent intercourse with said Richard Bein, the liquidating partner, from inspection of the books of said firm of R. & A. B. Bein, as well as from his knowledge at this day that no debts have been paid to any large amount after May, 1838, of the said firm of R. & A. B. Bein; this he knows from the fact that he was sued in 1839 by Layet & Amelung for a debt of R. & A. B. Bein, part of which was contracted before the dissolution of the firm in 1836; also from the fact that shortly after the judgment against them by Layett & Amelung, deponent and his brother, said Richard, went into the State court for the benefit of the insolvent law, and again afterwards deponent went into the court of bankruptcy of the United States in this city, which he would not have done had there not been a large outstanding quantity of debts due by said firm, and beyond their means of payment; and he knows

that the firm was insolvent from the foregoing means of knowledge above detailed; his means of knowledge of the situation and pecuniary means of said Richard Bein, in 1838, was derived from his most intimate intercourse with said Richard, they being brothers, and being fully in each other's confidence; as also from an inspection of the books of the late firm of R. & A. B. Bein, which was in liquidation at that time, (in May, 1838;) deponent at that time (May, 1838,) was a member of the firm of J. Hall & A. B. Bein, which said firm was in good credit at that time.

3rd. To the third cross-interrogatory he answers, that his means of knowledge of the facts stated in his answer to the sixth interrogatory is derived from an inspection of the books of R. & A. B. Bein; as to the time, place, and the other circumstances attending the loan and enquired of, deponent has no knowledge, nor does he know in what kind of money the loan was made.

4th. To the fourth cross-interrogatory he saith, that the cross-interrogatory is fully answered by the answer to the preceding cross-interrogatory.

5th. To the fifth cross-interrogatory he saith, that his means of knowledge are derived from the books of the late firm of R. & A. B. Bein.

6th. To the sixth cross-interrogatory he answers, that his knowledge is derived from his being a partner of said firm of R. & A. B. Bein and from his inspection of the books; deponent can make no further answer to this cross-interrogatory than that contained in the answer to the 7th interrogatory in chief.

7th. To the seventh cross-interrogatory he answers, that he never had any knowledge of Mrs. Bein's affairs; does not know whether the money was applied to her benefit or not; Mrs. Bein had several children in May, 1838; does not recollect the ages of all of them; she had Anna Liddle, (Mrs. Hawkins,) William Liddle, Mary Bein, and Catherine Bein; does not know Mrs. Bein had no use for money in May, 1838; never knew a person who had no use for money.

8th. Deponent having stated nothing in answer to the last interrogatory in chief, has therefore no answer to make to this interrogatory.

(Signed,) A. B. BEIN.

The above testimony taken before me the day and date aforesaid.

(Signed,) DUNCAN N. HENNEN,
*Commissioner.*

UNITED STATES CIRCUIT COURT:

RICHARD BEIN & MARY BEIN, his wife,
vs.
MARY HEATH. } In chancery.

During the trial of this cause the complainants offered in evidence the answers to interrogatories of John D. Bein and Archibald B. Bein, testimony taken by Duncan N. Hennen, commissioner of this court, under a commission issued in this case, to which the solicitors for the defendant objected, upon the grounds that the said answers contained hearsay, irrelevant, and secondary testimony, which was illegal evidence, and

inferences not founded on facts within the knowledge of the witnesses; that said answers contained evidence of entries made in commercial books, and of other written evidence, while the books referred to, and other documents, were not legal evidence in the case, much less parol evidence of their contents; that no evidence under the pleadings was admissible, except that of a counter letter.

The solicitors for the defendant object specially to the answers of John D. Bein; to the answer to the 5th interrogatory, because in his answers to the 2nd and 6th cross-interrogatories he shows that his testimony is based upon information derived from the books of R. & A. B. Bein and R. Bein's representations to the witness; the witness does not swear to facts within his own knowledge.

To the answers to the eighth interrogatory they object, because it appears from his answer to the fifth and seventh cross-interrogatory that the witness had no personal knowledge of the facts stated in his answer to the said eighth interrogatory. That all his knowledge was derived from having seen the notarial act of mortgage given by Mrs. Bein to Shearman Heath on file in this case, and from having seen the commercial books of R. & A. B. Bein, the books themselves not being admissible in this, much [less] evidence of their contents.

To the answer to the ninth interrogatory they object, because in his answer to the 5th cross-interrogatory he shews he knew nothing about the loan of the money; he then will not be allowed to say that the money borrowed was applied to certain purposes when he does not know that the money was borrowed at all.

To the answer to the tenth cross interrogatory they object, because from his answers to the 5th, 7th, and 10th interrogatory he had no personal knowledge of the facts in his said answer to the tenth interrogatory.

To the answer to the eleventh interrogatory they object, because from his answer to the 11th cross-interrogatory it appears he had no personal knowledge which justified his making the statements contained in his said answer to the eleventh interrogatory.

To the testimony of Archibald B. Bein the solicitor for the defendant object to all that part of witnesses answer to the 5th interrogatory in which he speaks of Richard Bein having made a loan of money from Sherman Heath & Co., because in his answer to the 3, 4, and 5th interrogatories he exposes the fact that he knew nothing of the loan except from the books of R. & A. Bein, which is not good evidence, and is besides contradicted by his oath to the schedule filed by him in the district court of Louisiana, and also by John D. Bein's testimony.

To the answer to the sixth interrogatory they object, because it appears from the answers of the witnesses to the 3d, 4th, and 5th cross-interrogatories that the witness knew nothing of the facts stated in his answer to the said 6th interrogatory, his knowledge being derived from the books of R. & A. B. Bein, which is not legal evidence.

To the answer to the seventh interrogatory they object, because it appears from the answers of the witness to the 3, 4, and 5th cross-interrog-

atory that the witness had no personal knowledge of the facts stated in his said answer as to the loan; the statement in said answer that the amount of the loan was entered in the books as money received from Sherman Heath & Co. is contradicted by the oath of the witness affixed to his schedule, as filed in the district court, and by the testimony of John D. Bein.

To the answer to the 8th interrogatory they object, because it appears from the answer to the ninth interrogatory and 7th cross-interrogatory, that the witness knew nothing of Mary Bein's affairs.

All of which objections to the testimony of John D. Bein and Archibald B. Bein are here noted, and the court has taken the same under consideration.

The testimony being received subject to all legal objections, the complainants offered in evidence documents purporting to be a release of mortgages by John D. Bein, syndic of Richard Bein, to which the solicitors for the defendant objected, upon the ground that the same was irrelevant to the matters before the court; which objection is noted, and after being considered by the court is overruled, and the document received.

The complainants offered in evidence a document purporting to be an act of sale made by the sheriff of the district court of the first judicial district of Louisiana, to which the solicitors of defendant objected, upon the ground that it was irrelevant to the case before the court; which objection being noted, after consideration is overruled, and the evidence received.

The solicitors for defendant, under an agreement between counsel to that effect, objected to all that part of Henry D. Richardson's testimony, taken under a commission executed by O. P. Jackson, which speaks of a loan of money from Sherman Heath to R. Bein, upon the ground that witness shews from the testimony that he knew nothing of said loan except what he had been told by R. Bein, which is hearsay and illegal testimony. The said objection being noted, is taken under consideration by the court.

The testimony being received subject to all legal objections, the solicitors for the defendant in evidence the letters of Sherman Heath, annexed to defendant's answer and marked as Exhibits A, B, and C, as part of the res gestae, and that the declarations of a deceased person in the usual course of his business, which was objected to by the solicitors for complainant upon the ground that they were no part of the res gestae, and could not be admitted as the declarations of a deceased person, that person being the son of the defendant. The court, after considering the objections, rejected the said evidence.

During the trial of the cause the complainants introduced in open court, viz., John D. Bein, G. Hearsay, E. H. Wheeler, and H. D. Richardson; to which the counsel for the defendant objected, upon the ground that witnesses could not be introduced in open court in chancery, but must have their testimony taken by commission; which objection was overruled by the court, and the witnesses permitted to be sworn.

The counsel for the defendant further objected to the testimony of H. D. Richardson and John D. Bein, upon the ground that the said witnesses had been previously examined by commission; which objection was overruled by the court.

(Signed,) THEO. H. McCALEB, *U. S. Judge.*

And afterwards, to wit, on the 27th July, 1844, the following decree was entered of record:

*Saturday, July 27th,* 1844.

RICHARD BEIN & MARY BEIN, his wife, vs. MARY HEATH. } In equity.

This cause came on for trial on the 29th day of May, 1844, and was argued by counsel; wherefore, in consideration of the law and the evidence, and the rules and principles of equity being in favor of the respondent, Mary Heath, it is ordered, adjudged, and decreed, that the complainant be dismissed with costs. And it is further ordered, adjudged, and decreed, that the injunction granted in this case be dissolved, and the respondent be allowed to proceed with the writ of seizure and sale granted in accordance with the prayer of her original petition.

Decree rendered July 27th, 1844.

Decree signed July 27th, 1844.

Signed, THEO. H. McCALEB, [SEAL]
*U. S. Judge.*

And afterwards, to wit, the following petition for appeal was filed July 27th, 1844.

RICHARD BEIN & MARY BEIN, his wife, vs. MARY HEATH. } In equity.

To the honorable the judges of the circuit court of the United States for the 5th circuit in and for the eastern district of Louisiana.

The petition of Richard Bein and Mary Bein, his wife, both of whom are citizens of the State of Louisiana, respectfully represent: That on the 27th day of July, 1844, a final decree was rendered against the said Mary Bein by this honorable court, in the suit of the said Richard Bein and Mary Bein vs. Mary Heath, dissolving the injunction therein obtained by the said Mary Bein; that the said Mary Bein, wife of the said Richard, is aggrieved by said decree, which is erroneous, illegal, and will work irreparable injury to the said Mary Bein, unless she is allowed an appeal. Wherefore, petitioners pray that an appeal may be allowed to the said Mary Bein from said decree, to the Supreme Court of the United States, according to law, on her executing a bond and giving the security required by law. They further pray, that a citation may issue against the said Mary Heath, who resides in England, and who is a subject of her majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, returnable according to law; and that

there may be a stay of execution until the final determination of said appeal in the Supreme Court of the United States. And the said Mary Bein prays for general and special relief.

Signed, EGGLESTON & HUNT, *Att'ys.*

My wife, Mary Bein, is authorized by me to take the appeal prayed for in the within petition, and to prosecute the same.

(Signed) R. BEIN.

Witness: G. S. HAWKINS, JOSEPH TAGERT, Jr.

*Judge's order.*

Let an appeal be granted according to the prayer of the within petition, on Mary Bein giving bond conditioned according to law, with G. S. Hawkins, S. W. Oakley and John Kemp as security in the sum of five hundred dollars.

(Signed) THEO. H. McCALEB, *U. S. Judge.*

*Bond.*

And on the 27th July, 1844, the following bond for appeal was filed:

RICHARD BEIN & MARY BEIN, vs. MARY HEATH. } No. 1133.

*Bond for appeal.*

Know all men by these presents that we, Mary Bein, wife of Richard Bein, as principal, and Gilbert S. Hawkins, S. W. Oakley as sureties, are held and firmly bound unto Mary Heath in the full and just sum of five hundred dollars, to be paid the said Mary Heath, her certain attorney, executors or administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and forty-four.

Whereas, lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein judgment was rendered against the said Mary Bein, plaintiff; and the said Mary Bein having obtained an appeal, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the decree in the said suit, and a citation directed to the said Mary Heath, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington, the second Monday of January next. Now the condition of the above obligation is such, that if the said Mary Bein shall prosecute her said appeal to effect, and answer all damages and costs if she fail to make appeal good, then the above obligation to be void, else to remain in full force and virtue.

Signed, M. BEIN, [SEAL.]
" G. S. HAWKINS, [SEAL.]
" S. W. OAKLEY, [SEAL.]
" JOHN KEMP. [SEAL.]

Sealed and delivered in the presence of—witness to the signature of Mary Bein and Richard Bein,

G. S. HAWKINS, JOSEPH TAGERT, Jr.

I authorize my wife Mary Bein to sign this bond.

(Signed) R. BEIN.

Witness to the signatures of G. S. Hawkins, S. W. Oakley and John Kemp.

P. J. COCKBURN.

*Entry from minutes.*

And afterwards, to wit, on the 29th July, the following entry was entered of record:

*Monday, July 29th*, 1844.

MARY BEIN
vs.
MARY HEATH.

On motion of respondent's solicitors, Elmore and King, it is ordered by the court that the complainants shew cause on the first Monday in September next, at ten o'clock, A. M., why the appeal granted in this case should not be set aside and dismissed, on the grounds, first, that the amount of said bond is not large enough to cover the damages the respondent will have sustained in case the decree of this honorable court shall be confirmed and maintained.

Second. That the sureties on said bond are insufficient.

And it is further ordered that the complainant shew cause, at the same time and place why she should not be punished, or her suit dismissed for a contempt of this honorable court, in refusing to comply with the order and decrees of this honorable court, commanding her to pay into court the rents of the house on Canal street, upon which respondent is seeking to enforce her mortgage; and that all other and further relief be granted, &c.

*Entry from minutes.*

And afterwards, to wit, on the 18th day of September, 1844, the following entry was entered of record:

*Wednesday, September 18th*, 1844.

R. BEIN & MARY BEIN,
vs.
MARY HEATH.
No. 1133.

In this case it is ordered by the court that the rule taken herein on the 29th day of July, 1844, be continued until the first Monday in October next.

And afterwards, to wit, on the 14th of October, 1844, the following entry was entered of record, to wit:

R. BEIN & MARY BEIN,
vs.
MARY HEATH.
No. 1133.

In this case it is ordered by the court that the rule taken herein by

the respondents on the 29th July, 1844, be set for trial for Wednesday, the 23rd October, 1844.

And on the 23rd October, 1844, the following entry was entered of record, to wit:

*Entry from minutes.*

*Wednesday, 23d of October*, 1844.

R. BEIN & M. BEIN,
vs.
MARY HEATH.

The rule taken in this case and set for hearing this day was laid over by consent until Monday, the 28th instant, at ten o'clock, A. M.

And on the 28th of October the following entry was entered of record, to wit:

*Entry from minutes.*

*Monday, October 28th*, 1844.

R. BEIN & MARY BEIN,
vs.
MARY HEATH.

The rule taken herein on the 29th July, 1844, by the defendants on complainants, to shew cause why the appeal granted in this case should not be set aside and dismissed on the grounds filed, W. A. Elmore, esquire, and J. W. Smith, esquire, for plaintiff in rule, and H. B. Eggleston, esquire, for defendants therein. Whereupon H. B. Eggleston, on behalf of defendants, offered in evidence the receipts of the marshal to R. Hunt for the rent due on the property in litigation, up to 1st of August, 1844, in payment of the same up to date, and after argument of counsel, when the court took the same under advisement.

*The following receipts offered in evidence by complainants.*

The following receipts offered in evidence by complainants, and filed 28th October, 1844.

Received from R. Hunt, esquire, seventy-five dollars for one month's rent due for house in Canal street on the first of August, 1843.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

Received from R. Hunt, esquire, seventy-five dollars for one month's rent due for house in Canal street on 1st September, 1843.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

Received from R. Hunt, esquire, seventy-five dollars for one month's rent of house in Canal street, due 1st October, 1843.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

Received from R. Hunt, esquire, seventy-five dollars for one month's rent of house in Canal street, due 1st November, 1843.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

Received from R. Hunt, esquire, seventy-five dollars for one month's rent of house in Canal street, due 1st Dedember, 1843.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

Received from R. Hunt, esquire, seventy-five dollars for one month's rent of a house in Canal street, due 1st January, 1844.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

Received from R. Hunt, esquire, one hundred and fifty dollars for two months' rent of house in Canal street, due 1st March, 1844.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

Received from R. Hunt, esquire, one hundred and fifty dollars for two months' rent of house in Canal street, due 1st May, 1844.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

Received from R. Hunt, esq., seventy-five dollars for *six* month's rent of house in Canal street, due 1st June, 1844.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

Received from R. Hunt, esquire, one hundred and fifty dollars for two months' rent of house in Canal street, due 1st August, 1844.

(Signed,) A. SIDNEY ROBERTSON, *U. S. M.*

*Judgment on rule.*

And afterwards, to wit, on the 29th October, 1844, the following entry was entered of record:

*Tuesday, October 29th*, 1844.

R. BEIN & MARY BEIN,
vs.
MARY HEATH.

The court having maturely considered the rule taken herein by the defendants on complainants, to shew cause why the appeal granted in this case should not be set aside and dismissed on the grounds filed, do *no* order, adjudge, and decree, that the same be dismissed, with costs.

Clerk's office, circuit court of the United States, fifth circuit and eastern district of Louisiana.

I, Duncan N. Hennen, clerk of the circuit court of the United States for the fifth judicial circuit, in and for the eastern district of Louisiana, do hereby certify, that the foregoing one hundred and twenty-five pages and four and a half lines contain a full, faithful, and true transcript of the record and proceedings and evidence adduced on the trial of the case of Mary Bein & R. Bein, her husband, vs. Mary Heath, No. 1133, of the records of said court, so far as the same now remains on file in this office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court at the city of New Orleans, this first [SEAL.] day of November, A. D. 1844, and 69th year of the independence of the United States.

For DUNCAN N. HENNEN, *Clerk*,
J. Q. A. HOIT, *Deputy Clerk*.

I, Theodore H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana, and one of the judges of the circuit court in and for the fifth circuit and eastern district of Louisiana, do hereby certify, that Duncan N. Hennen is the clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana; and that J. Q. A. Hoit, who signed the foregoing certificate, is the deputy clerk, and was at the time of so doing; and that due faith and credit are due and ought to be given to his acts as such; and that the above certificate is in due form of law.

Witness my hand and seal, this first day of November, A. D. 1844.

THEO. H. McCALEB, [SEAL.]

*District judge U. S. court, eastern district of Louisiana.*

*Citation of appeal.*

The United States of America, to Mary Heath, who resides in England, and who is a subject of her majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of January next, pursuant to a writ of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Mary Bein, wife of Richard Bein, and duly authorized by her said husband, is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant as in the said writ of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-seventh day of July, [L. S.] in the year of our Lord one thousand eight hundred and forty-four.

THEO. H. McCALEB, *U. S. Judge.*

*Marshal's return.*

Received July 29th, 1844, and on the 5th day of August, 1844, I served a copy of the within citation of appeal on Mrs. Mary Heath, she being absent, (in England, as I was informed,) by handing the same to her attorney, W. A. Elmore, in person, at New Orleans.

For A. S. ROBERTSON, *Marshal*,
J. P. WALDEN, *Deputy Marshal.*

*Writ of appeal.*

Copy of the writ of appeal lodged in the clerk's office of the circuit court of the United States, for the ninth circuit and eastern district of Louisiana, in pursuance [of] the statute in such cases made and provided, this day of .